NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Madeleine Clayton 05/10/2002
Departmental Forms Clearance Officer
Office of the Chief Information Officer
14th and Constitution Ave. NW.
Room 6086
Washington, DC 20230

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for the extension of approval of an information collection received on 02/28/2002.

TITLE: Deep Seabed Mining Regulations for Exploration Licenses

AGENCY FORM NUMBER(S): None

ACTION : APPROVED WITHOUT CHANGE
OMB NO.: 0648-0145
EXPIRATION DATE: 05/31/2005

| BURDEN | RESPONSES | BURDEN HOURS | BURDEN COSTS |
|---|---|---|---|
| Previous | 2 | 40 | 0 |
| New | 2 | 40 | 0 |
| Difference | 0 | 0 | 0 |
| Program Change | | 0 | 0 |
| Adjustment | | 0 | 0 |

TERMS OF CLEARANCE: None

OMB Authorizing Official Title

Donald R. Arbuckle Deputy Administrator, Office of Information and Regulatory Affairs

# PAPERWORK REDUCTION ACT SUBMISSION

**Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.**

1. Agency/Subagency originating request
DOC/NOAA/NOS/OCRM/Coastal Programs Division

2. OMB control number b. [ ] None
a. 0648 - 0145

3. Type of information collection (*check one*)
a. [ ] New Collection
b. [ ] Revision of a currently approved collection
c. [✔] Extension of a currently approved collection
d. [ ] Reinstatement, without change, of a previously approved collection for which approval has expired
e. [ ] Reinstatement, with change, of a previously approved collection for which approval has expired
f. [ ] Existing collection in use without an OMB control number
For b-f, note Item A2 of Supporting Statement instructions

4. Type of review requested (*check one*)
a. [✔] Regular submission
b. [ ] Emergency - Approval requested by ____/____/____
c. [ ] Delegated

5. Small entities
Will this information collection have a significant economic impact on a substantial number of small entities? [ ] Yes [✔] No

6. Requested expiration date
a. [✔] Three years from approval date b. [ ] Other Specify: ____/____

7. Title
Deep Seabed Mining Regulations for Exploration Licenses

8. Agency form number(s) (*if applicable*) N/A

9. Keywords
'marine resources, mineral resources'

10. Abstract

The Deep Seabed Hard Mineral Resources Act requires applicants for an exploration license to submit information for NOAA to make a determination as to the applicants eligibility to meet the provisions of the legislation. Information will be used to determine the financial, environmental and technological eligibility of the applicant to meet the requirements of the Act to conduct exploration activities. Licensees are required to submit annual reports.

11. Affected public (*Mark primary with "P" and all others that apply with "x"*)
a. ___ Individuals or households d. ___ Farms
b. p Business or other for-profit e. ___ Federal Government
c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government

12. Obligation to respond (*check one*)
a. [ ] Voluntary
b. [ ] Required to obtain or retain benefits
c. [✔] Mandatory

13. Annual recordkeeping and reporting burden
a. Number of respondents 2
b. Total annual responses 2
1. Percentage of these responses collected electronically 0 %
c. Total annual hours requested 40
d. Current OMB inventory 40
e. Difference 0
f. Explanation of difference
1. Program change
2. Adjustment

14. Annual reporting and recordkeeping cost burden *(in thousands of dollars)*
a. Total annualized capital/startup costs 0
b. Total annual costs (O&M) 0
c. Total annualized cost requested 0
d. Current OMB inventory 0
e. Difference 0
f. Explanation of difference
1. Program change
2. Adjustment

15. Purpose of information collection (*Mark primary with "P" and all others that apply with "X"*)
a. ___ Application for benefits e. ___ Program planning or management
b. ___ Program evaluation f. ___ Research
c. ___ General purpose statistics g. p Regulatory or compliance
d. ___ Audit

16. Frequency of recordkeeping or reporting *(check all that apply)*
a. [✔] Recordkeeping b. [ ] Third party disclosure
c. [✔] Reporting
1. [✔] On occasion 2. [ ] Weekly 3. [ ] Monthly
4. [ ] Quarterly 5. [ ] Semi-annually 6. [✔] Annually
7. [ ] Biennially 8. [ ] Other (describe)

17. Statistical methods
Does this information collection employ statistical methods
[ ] Yes [✔] No

18. Agency Contact (person who can best answer questions regarding the content of this submission)
Name: Joseph P. Flanagan
Phone: 301-713-3155 x201

## 19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

**NOTE:** The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

(a) It is necessary for the proper performance of agency functions;

(b) It avoids unnecessary duplication;

(c) It reduces burden on small entities;

(d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;

(e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;

(f) It indicates the retention period for recordkeeping requirements;

(g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):

(i) Why the information is being collected;

(ii) Use of information;

(iii) Burden estimate;

(iv) Nature of response (voluntary, required for a benefit, mandatory);

(v) Nature and extent of confidentiality; and

(vi) Need to display currently valid OMB control number;

(h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);

(i) It uses effective and efficient statistical survey methodology; and

(j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

| Signature of Senior Official or designee | Date |
|---|---|
| | |

| Agency Certification (signature of Assistant Administrator or head of MB staff for L.O.s, or of the Director of a Program or Staff Office) | |
|---|---|
| Signature<br>signed by Hugh Johnson | Date<br>2/20/2002 |
| Signature of NOAA Clearance Officer | |
| Signature<br>signed by Richard Roberts | Date<br>2/21/2002 |

**SUPPORTING STATEMENT**
**DEEP SEABED MINING EXPLORATION LICENSES**
**OMB CONTROL NO. 0648-0145**

## A. JUSTIFICATION

### 1. Explain the circumstances that make the collection of information necessary.

The Deep Seabed Hard Mineral Resources Act (P.L. 96-283) and its implementing regulations (15 CFR Part 970) authorizes the Administrator of NOAA to issue to eligible United States citizens licenses for exploration deep seabed hard mineral resources beyond the continental shelf. The statutory requirements for the collection of information are contained in sections 102-105, 113, and 114 of the law. The law and NOAA's regulations require applicants for issuance or transfer of an exploration license to submit financial, technical and environmental information to NOAA in order for it to be able make a determination as to the applicants eligibility to meet the provisions of the legislation for the issuance or transfer of an exploration license.

The legislation requires a licensee to submit pertinent information upon its request for a revision or extension of its exploration license or exploration plan.

The legislation also requires a licensee to annually submit a report which describes its exploration activities for the past year and its diligence in following its approved exploration plan.

### 2. Explain how, by whom, how frequently, and for what purpose the information will be used.

The information with the application for a license or transfer of a license will be used by NOAA to determine the financial and technological eligibility of the applicant to meet the requirements of the Deep Seabed Hard Mineral Resources Act to conduct exploration activities in an environmentally sound manner. The information will also be used in the preparation of the environmental impact statement required by the Act and the National Environmental Policy Act.

The specific requirements in the regulation for a license application, and the provision in the law that requires such information, are:

§970.201 - Statement of financial resources. The application must contain information upon which to base a determination that the applicant will have sufficient resources to carry out the exploration plan. The information must include: (1) a description of how the applicant intents to finance the exploration program; (2) the estimate cost of the program; (3) the applicant's most recent audited financial statement, annual report, Form 10-K filed with the Securities and Exchange Commission, and the credit and bond rating of the applicant. [30 U.S.C. 1413(c)]

§970.202 - Statement of technological experience and capabilities. The application must demonstrate that the applicant has the technological capability to carry out the exploration plan. The information must include a description of the exploration and monitoring equipment to be used and a description of the experience upon which the application will rely in using the equipment. [30 U.S.C. 1413(c)]

§970.203 - Exploration plan. Each application must include an exploration plan that describes the projected exploration activities during the license period. The plan must demonstrate that the efforts are likely to lead to the ability to apply for a commercial recovery permit at the end of the license period. The plan must include the following information: (1) the proposed activities to be carried out; (2) a description of the area to be explored; (3) the intended exploration schedule; (4) a description of the methods to be used; (5) a description of the technology to be used and an evaluation of the technology; (6) an estimated schedule of expenditures; (7) measures to protect the environment and monitor the effectiveness of environmental safeguards; (8) and a description of the relevant activity completed prior to the submission of the application. [30 U.S.C. 1413(c)]

§970.204 - Environmental and use conflict analysis. The applicant must furnish information on physical, chemical, biological, and potential use conflict on the exploration area. The information is used in preparing NOAA's environmental impact statement. [30 U.S.C. 1413(a), 1415(a)]

§970.205 - Vessel safety. The application must contain an affirmation that any U.S. flag vessel used in the exploration activities will possess a currently valid Coast Guard Certificate of Inspection. If a foreign flag vessel is to be used, applicable safety (SOLAS 60 and 74) certificates must be obtained. [30 U.S.C. 1422]

§970.206 - Statement of ownership. The applicant must include information to demonstrate that the applicant is a U.S. citizen. The information includes: the name, address, and telephone number of the U.S. citizen responsible for exploration operations; a description of the citizen engaging in the exploration (whether the citizen is a natural person, partnership, corporation, etc.); state of incorporation; name of registered agent and place of business; certificate of incorporation or articles of association; and the name of each member of an association. [30 U.S.C. 1412(b)]

§970.207 - Antitrust information. The application must contain sufficient information for an antitrust review by the U.S. Attorney General and the Federal Trade Commission. This may include: a copy of each agreement between participating parties; identify of any affiliate; for any affiliate, the parent or subsidiary engaged in related production, purchase, or sale; annual tonnage and dollar value of minerals and metals purchased, sold, or produced for the two preceding years; copies of annual reports; and copies of documents submitted to the Securities and Exchange Commission. [30 U.S.C. 1413(d)]

§970.208 - Fee. A fee payment of $100,000 must accompany each application to cover NOAA's administrative costs for reviewing and processing the application. [30 U.S.C. 1414]

The information submitted with a request for a revision or extension of an exploration license or exploration plan will be used by NOAA to prepare a written finding that the revision or extension will comply with the requirements of the Act and regulations.

The information submitted with an application for issuance, transfer, extension or revision of a license is also used by NOAA to fulfill its function under the Act for consultation and cooperation with other Federal agencies in relation to their programs and authorities, in order to reduce the number of separate actions required to satisfy Federal agencies responsibilities.

The information submitted in the annual report is used by NOAA to ensure that the licensee is diligent in following its approved exploration plan and to prepare a Biennial Report .to Congress (the requirement for NOAA to submit the Biennial Report to Congress has been suspended because of the present low level of activity under the 2 NOAA-issued licenses).

The specific information that maybe required after issuance of the license is:

§970.510 - Objections to terms, conditions, and restrictions (TCRs). The licensee may file a notice of objection to any TCR within 60 days after a notice of issuance or transfer of a license. Any notice of objection must indicate the legal or factual basis for the objection and must provide information relevant to any underlying factual issues deemed by the licensee as necessary to NOAA's decision on the objection. [30 U.S.C. 1415(b)(3)]

§970.513 - Revision of a license. During the term of the license the licensee may submit an application for a revision of either the license or the exploration plan associated with it. [30 U.S.C. 1415(c)(2)]

§970.516 - Approval of license transfers. A licensee may submit a request for a license transfer. The proposed transferee will be deemed an applicant for a license and will be subject to the requirements and procedures of an original license application. [30 U.S.C. 1413(a)]

§970.522 - Monitoring requirements. Each exploration license requires the licensee to monitor the environmental effects of its activities in accordance with NOAA's guidelines and to submit data and other information as necessary to permit evaluation of the environmental effects. [30 U.S.C. 1424]

Some of NOAA's information requirements are consolidated with NOAA's regulations for commercial recovery in 15 CFR 971.

§971.801 - Records to be maintained and information to be submitted by licensees. In addition to the other information specified, the licensee must keep such records, consistent with standard accounting principles, as NOAA may specify for each license. Such records must include information which will fully disclose expenditures for exploration for, or commercial recovery of, hard mineral resources in the area under license or permit, and any other information which will facilitate an effective audit of these expenditures. The licensee will be required to submit to the Administrator, upon request, data or other information the

Administrator may reasonably need for purposes of: (1) making determinations with respect to the issuance, revocation, modification, or suspension of the license or permit in question; (2) evaluating the effectiveness of license or permit TCRs; (3) compliance with the biennial Congressional report requirement contained in section 309 of the Act; and (4) evaluation of the exploration or commercial recovery activities conducted by the licensee.

At a minimum, licensees must submit an annual written report within 90 days after each anniversary of the license issuance or transfer, discussing exploration or commercial recovery activities and expenditures. The report must address diligence requirements of 970.602 and environmental monitoring to address 970.522(c) and 970.702(a). [30 U.S.C. 1423, 1418]

§971.802 - Requests for confidential treatment of documents received by NOAA. A licensee requesting confidential treatment of information considered to be protected under the Trade Secrets Act (18 U.S.C. 1905) or of financial information that is privileged or confidential must submit a written request at the time the information is submitted. Requests must state the period of time for which confidential treatment is requested, and must include the name, mailing address, and telephone number of an agent of the submitter who is authorized to receive notice of request for disclosure of the information. [30 U.S.C. 1423]

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.**

The collection of information does not involve the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

**4. Describe efforts to identify duplication.**

There are no other collections gathering the same information. All information is required by the Deep Seabed Hard Mineral Resources Act to be the submitted by the license applicant or license holder to NOAA only.

**5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.**

Information collection does not involve small businesses or other small entities.

**6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

The Deep Seabed Hard Mineral Resources Act requires that an application for issuance, extension, revision or transfer of a license contain adequate financial, technical and environmental information in order for NOAA to make a determination as to the applicant's eligibility for these actions and to conduct exploration activities. Fulfilling NOAA's

responsibility under the Act is impossible without the timely submission of adequate information.

If a licensee does not submit an annual report describing exploration activities, it is in violation of the Act and may have its license suspended..

**7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.**

Section 970.200 of the regulations requires 30 copies of an application for issuance or transfer of a license to be submitted to NOAA. Consultations are required with a number of other agencies, and the number of copies aid in their timely review. If an applicant finds this too burdensome, the regulations provide for a waiver of the number of copies. Since no applications have been received in some years and none are expected, it is somewhat of a moot point.

**8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and record keeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

A Federal Register Notice (copy attached) was published to solicit comments. None were received.

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

No payments or gifts are provided.

**10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.**

Section 970.902 of the regulations provides a procedure for requesting confidential treatment for any information that the applicant considers to be protected by the Trade Secrets Act or otherwise to be a trade secret or commercial or financial information which is privileged or confidential.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

There is no information required in an application for issuance, transfer, revision or extension of a license, or for annual reporting, that is of a sensitive nature as described above.

**12. Provide an estimate in hours of the burden of the collection of information.**

An application could take from 2,000 - 4,000 hours, depending on the complexity of the request. This estimate is based on the fact that much of the information required would otherwise be needed by the applicant anyway for management purposes and to obtain funding. However, NOAA has not received any applications for some years and expect none in the PRA approval period being requested.

The annual reports are estimated to take 20 hours per response. Again, much of the data would be required for business purposes. There are 2 existing licensees, so the requested burden is:

2 licensees x 20 hours per annual report = 40 hours.

**13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection.**

The cost of an application would be the $100,000 fee, but since no applications are expected the anticipated application cost is $0.

The costs for reporting are estimated to be $100 per report, or $200 total. Since no at-sea exploration activities are expected, there will be no costs for environmental monitoring.

**14. Provide estimates of annualized cost to the Federal government.**

There is an estimated cost of $200 for reviewing the annual reports.

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.**

No changes are requested.

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

No collection information will be published.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

Not applicable.

**18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.**

Not applicable.

## B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

The collection does not employ statistical methods.

(3) Except where urgency precludes it, DOS, DOD, DOC and IC will consult to attempt to come to an agreement concerning appropriate conditions, if any, to be imposed on the licensee in accordance with determinations made by DOS or DOD. Consultations shall be constructed so that, in the event an agreement cannot be reached at the staff level, sufficient time will remain to allow the Secretary of Commerce to consult personally with the Secretary of State or the Secretary of Defense, as appropriate, prior to the issuance of a determination by the Secretary of State or the Secretary of Defense in accordance with (4) below. That function shall not be delegated below the acting Secretary.

(4) After such consultations, or when the Secretary of State or the Secretary of Defense specifically determines that urgency precludes consultation with the Secretary of Commerce, the Secretary of State or the Secretary of Defense, shall determine the conditions necessary to meet international obligations, significant foreign policy concerns, or significant national security concerns, especially where those interests identified in the National Security Strategy would be put at risk. This function shall not be delegated below the acting Secretary. The Secretary of State or the Secretary of Defense will provide to the Secretary of Commerce his or her determination regarding the conditions required to be imposed on the licensee. The determination will describe the international obligations, specific foreign policy, or national security interest at risk. Upon receipt of the determination, DOC shall immediately notify the licensee of the imposition of limiting conditions on commercial operations. Copies of the determination and any implementing DOC action will be provided promptly to the Assistant to the President for National Security Affairs and the Assistant to the President for Science and Technology.

(5) If the Secretary of Commerce believes the conditions determined by another Secretary are inappropriate, he or she will, simultaneous with notification of, and imposition of such conditions on, the licensee, so notify the Secretary of Defense or the Secretary of State, as appropriate, the Assistant to the President for National Security Affairs, and the Assistant to the President for Science and Technology. The Assistant to the President for National Security Affairs, in coordination with the Assistant to the President for Science and Technology, will initiate as soon as possible a Principals-level consultative process to achieve a consensus within the interagency, or, failing that, refer the matter to the President for decision. All efforts will be taken to resolve the disagreement within 7 working days of its submission to the Assistant to the President for National Security Affairs and the Assistant to the President for Science and Technology.

C. Coordination Before Release of Information Provided or Generated by Other Agencies

Before releasing any information provided or generated by another agency to a licensee or potential licensee, to the public, or to an administrative law judge, each agency agrees to consult with the agency that provided or generated the information. The purpose of such consultations will be to review the propriety of any proposed release of information that may be privileged because it is classified, pre-decisional, deliberative, contain proprietary information, or is protected for other reasons. No information shall be released without the approval of the agency that provided or generated it unless required by law.

D. No Legal Rights or Remedies, or Legally Enforceable Causes of Action, are Created or Intended to be Created by the MOU.

# PART 970—DEEP SEABED MINING REGULATIONS FOR EXPLORATION LICENSES

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AUTHORITY: 30 U.S.C. 1401 *et seq.*

## Subpart A—General

SOURCE: 46 FR 45896, Sept. 15, 1981, unless otherwise noted.

### § 970.100 Purpose.

(a) *General.* The purpose of this part is to implement those responsibilities and authorities of the National Oceanic and Atmospheric Administration

(NOAA), pursuant to Public Law 96–283, the Deep Seabed Hard Mineral Resources Act (the Act), to issue to eligible United States citizens licenses for the exploration for deep seabed hard minerals.

(b) *Purposes of the Act.* In preparing these regulations NOAA has been mindful of the purposes of the Act, as set forth in section 2(b) thereof. These include:

(1) Encouraging the successful conclusion of a comprehensive Law of the Sea Treaty, which will give legal definition to the principle that the hard mineral resources of the deep seabed are the common heritage of mankind and which will assure, among other things, nondiscriminatory access to such resources for all nations;

(2) Establishing, pending the ratification by, and entering into force with respect to, the United States of such a treaty, an interim program to regulate the exploration for and commercial recovery of hard mineral resources of the deep seabed by United States citizens;

(3) Accelerating the program of environmental assessment of exploration for and commercial recovery of hard mineral resources of the deep seabed and assuring that such exploration and recovery activities are conducted in a manner which will encourage the conservation of such resources, protect the quality of the environment, and promote the safety of life and property at sea;

(4) Encouraging the continued development of technology necessary to recover the hard mineral resources of the deep seabed; and

(5) Pending the ratification by, and entry into force with respect to, the United States of a Law of the Sea Treaty, providing for the establishment of an international revenue-sharing fund the proceeds of which will be used for sharing with the international community pursuant to such treaty.

(c) *Regulatory approach.* (1) These regulations incorporate NOAA's recognition that the deep seabed mining industry is still evolving and that more information must be developed to form the basis for future decisions by industry and by NOAA in its implementation of the Act. They also recognize the need for flexibility in order to promote the development of deep seabed mining technology, and the usefulness of allowing initiative by miners to develop mining techniques and systems in a manner compatible with the requirements of the Act and regulations. In this regard, the regulations reflect an approach, pursuant to the Act, whereby their provisions ultimately will be addressed and evaluated on the basis of exploration plans submitted by applicants.

(2) In addition, these regulations reflect NOAA's recognition that the difference in scale and effects between exploration for and commercial recovery of hard mineral resources normally requires that they be distinguished and addressed separately. This distinction is also based upon the evolutionary stage of the seabed mining industry referenced above. Thus, NOAA will issue separate regulations pertaining to commercial recovery, in part 971 of this chapter.

[46 FR 45896, Sept. 15, 1981; 47 FR 5966, Feb. 9, 1982]

### § 970.101 Definitions.

For purposes of this part, the term:

(a) *Act* means the Deep Seabed Hard Mineral Resources Act (Pub. L. 96–283; 94 Stat. 553; 30 U.S.C. 1401 *et seq.*);

(b) *Administrator* means the Administrator of the National Oceanic and Atmospheric Administration, or a designee;

(c) *Applicant* means an applicant for an exploration license pursuant to the Act and this part;

(d) *Affiliate* means any person:

(1) In which the applicant or licensee owns or controls more than 5% interest;

(2) Which owns or controls more than 5% interest in the applicant or licensee; or

(3) Which is under common ownership or control with the applicant or licensee.

(e) *Commercial recovery* means:

(1) Any activity engaged in at sea to recover any hard mineral resource at a substantial rate for the primary purpose of marketing or commercially using such resource to earn a net profit, whether or not such net profit is actually earned;

(2) If such recovered hard mineral resource will be processed at sea, such processing; and

(3) If the waste of such activity to recover any hard mineral resource, or of such processing at sea, will be disposed of at sea, such disposal;

(f) *Continental Shelf* means:

(1) The seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such submarine area; and

(2) The seabed and subsoil of similar submarine areas adjacent to the coast of islands;

(g) *Controlling interest*, for purposes of paragraph (t)(3) of this section, means a direct or indirect legal or beneficial interest in or influence over another person arising through ownership of capital stock, interlocking directorates or officers, contractual relations, or other similar means, which substantially affect the independent business behavior of such person;

(h) *Deep seabed* means the seabed, and the subsoil thereof to a depth of ten meters, lying seaward of and outside:

(1) The Continental Shelf of any nation; and

(2) Any area of national resource jurisdiction of any foreign nation, if such area extends beyond the Continental Shelf of such nation and such jurisdiction is recognized by the United States;

(i) *Exploration* means:

(1) Any at-sea observation and evaluation activity which has, as its objective, the establishment and documentation of:

(i) The nature, shape, concentration, location, and tenor of a hard mineral resource; and

(ii) The environmental, technical, and other appropriate factors which must be taken into account to achieve commercial recovery; and

(2) The taking from the deep seabed of such quantities of any hard mineral resource as are necessary for the design, fabrication and testing of equipment which is intended to be used in the commercial recovery and processing of such resource;

(j) *Hard mineral resource* means any deposit or accretion on, or just below, the surface of the deep seabed of nodules which include one or more minerals, at least one of which contains manganese, nickel, cobalt, or copper;

(k) *International agreement* means a comprehensive agreement concluded through negotiations at the Third United Nations Conference on the Law of the Sea, relating to (among other matters) the exploration for and commercial recovery of hard mineral resources and the establishment of an international regime for the regulation thereof;

(l) *Licensee* means the holder of a license issued under this part to engage in exploration;

(m) *New entrant* means any applicant, with respect to:

(1) Any application which has not been accorded a pre-enactment explorer priority of right under § 970.301; or

(2) Any amendment which has not been accorded a pre-enactment explorer priority of right under § 970.302.

(n) *NOAA* means the National Oceanic and Atmospheric Administration;

(o) *Permittee* means the holder of permit issued under NOAA regulations to engage in commercial recovery;

(p) *Person* means any United States citizen, any individual, and any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any nation;

(q) *Pre-enactment explorer* means a person who was engaged in exploration prior to the date of enactment of the Act (June 28, 1980);

(r) *Reciprocating state* means any foreign nation designated as such by the Administrator under section 118 of the Act;

(s) *United States* means the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States; and

(t) *United States citizen* means

(1) Any individual who is a citizen of the United States;

(2) Any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any of the United States; and

(3) Any corporation, partnership, joint venture, association, or other entity (whether organized or existing under the laws of any of the United States or a foreign nation) if the controlling interest in such entity is held by an individual or entity described in paragraph (t)(1) or (t)(2) of this section.

[46 FR 45896, Sept. 15, 1981, as amended at 47 FR 5967, Feb. 9, 1982]

### § 970.102 Nature of licenses.

(a) A license issued under this part will authorize the holder thereof to engage in exploration within a specific portion of the sea floor consistent with the provisions of the Act, this part, and the specific terms, conditions and restrictions applied to the license by the Administrator.

(b) Any license issued under this part will be exclusive with respect to the holder thereof as against any other United States citizen or any citizen, national or governmental agency of, or any legal entity organized or existing under the laws of, any reciprocating state.

(c) A valid existing license will entitle the holder, if otherwise eligible under the provisions of the Act and implementing regulations, to a permit for commercial recovery from an area selected within the same area of the sea floor. Such a permit will recognize the right of the holder to recover hard mineral resources, and to own, transport, use, and sell hard mineral resources recovered, under the permit and in accordance with the requirements of the Act.

### § 970.103 Prohibited activities and restrictions.

(a) *Prohibited activities and exceptions.* (1) Except as authorized under subpart C of this part, no United States citizen may engage in any exploration or commercial recovery unless authorized to do so under:

(i) A license or a permit issued pursuant to the Act and implementing regulations;

(ii) A license, permit, or equivalent authorization issued by a reciprocating state; or

(iii) An international agreement which is in force with respect to the United States.

(2) The prohibitions of paragraph (a)(1) of this section will not apply to any of the following activities:

(i) Scientific research, including that concerning hard mineral resources;

(ii) Mapping, or the taking of any geophysical, geochemical, oceanographic, or atmospheric measurements or random bottom samplings of the deep seabed, if such taking does not significantly alter the surface or subsurface of the deep seabed or significantly affect the environment;

(iii) The design, construction, or testing of equipment and facilities which will or may be used for exploration or commercial recovery, if such design, construction or testing is conducted on shore, or does not involve the recovery of any but incidental hard mineral resources;

(iv) The furnishing of machinery, products, supplies, services, or materials for any exploration or commercial recovery conducted under a license or permit issued under the Act and implementing regulations, a license or permit or equivalent authorization issued by a reciprocating state, or under an international agreement; and

(v) Activities, other than exploration or commercial recovery activities, of the Federal Government.

(3) No United States citizen may interfere or participate in interference with any activity conducted by any licensee or permittee which is authorized to be undertaken under a license or permit issued by the Administrator to a licensee or permittee under the Act or with any activity conducted by the holder of, and authorized to be undertaken under, a license or permit or equivalent authorization issued by a reciprocating state for the exploration or commercial recovery of hard mineral resources. For purposes of this section, interference includes physical interference with activities authorized by the Act, this part, and a license issued pursuant thereto; the filing of specious claims in the United States or

any other nation; and any other activity designed to harass deep seabed mining activities authorized by law. Interference does not include the exercise of any rights granted to United States citizens by the Constitution of the United States, any Federal or State law, treaty, or agreement or regulation promulgated pursuant thereto.

(4) United States citizens must exercise their rights on the high seas with reasonable regard for the interests of other states in their exercise of the freedoms of the high seas.

(b) *Restrictions on issuance of licenses or permits.* The Administrator will not issue:

(1) Any license or permit after the date on which an international agreement is ratified by and enters into force with respect to the United States, except to the extent that issuance of such license or permit is not inconsistent with such agreement;

(2) Any license or permit the exploration plan or recovery plan of which, submitted pursuant to the Act and implementing regulations, would apply to an area to which applies, or would conflict with:

(i) Any exploration plan or recovery plan submitted with any pending application to which priority of right for issuance applies under this part;

(ii) Any exploration plan or recovery plan associated with any existing license or permit; or

(iii) Any equivalent authorization which has been issued, or for which formal notice of application has been submitted, by a reciprocating state prior to the filing date of any relevant application for licenses or permits pursuant to the Act and implementing regulations;

(3) A permit authorizing commercial recovery within any area of the deep seabed in which exploration is authorized under a valid existing license if such permit is issued to a person other than the licensee for such area;

(4) Any exploration license before July 1, 1981, or any permit which authorizes commercial recovery to commence before January 1, 1988;

(5) Any license or permit the exploration plan or recovery plan for which applies to any area of the deep seabed if, within the 3-year period before the date of application for such license or permit:

(i) The applicant therefor surrendered or relinquished such area under an exploration plan or recovery plan associated with a previous license or permit issued to such applicant; or

(ii) A license or permit previously issued to the applicant had an exploration plan or recovery plan which applied to such area and such license or permit was revoked under section 106 of the Act; or

(6) A license or permit, or approve the transfer of a license or permit, except to a United States citizen.

## Subpart B—Applications

SOURCE: 46 FR 45898, Sept. 15, 1981, unless otherwise noted.

### § 970.200 General.

(a) *Who may apply; how.* Any United States citizen may apply to the Administrator for issuance or transfer of an exploration license. Applications must be submitted in the form and manner prescribed in this subpart.

(b) *Place, form and copies.* Applications for the issuance or transfer of exploration licenses must be submitted in writing, verified and signed by an authorized officer or other authorized representative of the applicant, in 30 copies, to the following address: Office of Ocean Minerals and Energy, National Oceanic and Atmospheric Administration, suite 410, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, DC 20235. The Administrator may waive, in whole or in part, at his discretion, the requirement that 30 copies of an application be filed with NOAA.

(c) *Use of application information.* The contents of an application, as set forth below, must provide NOAA with the information necessary to make determinations required by the Act and this part pertaining to the issuance or transfer of an exploration license. Thus, each portion of the application should identify the requirement in this part to which it responds. In addition, the information will be used by NOAA in its function under the Act of consultation and cooperation with other

Federal agencies or departments in relation to their programs and authorities, in order to reduce the number of separate actions required to satisfy Federal agencies' responsibilities.

(d) *Pre-application consultation.* To assist in the development of adequate applications and assure that applicants understand how to respond to the provisions of this subpart, NOAA will be available for pre-application consultations with potential applicants. This includes consultation on the procedures in subpart C. In appropriate circumstances, NOAA will provide written confirmation to the applicant of any oral guidance resulting from such consultations.

(e) *Priority of right.* (1) Priority of right for issuance of licenses to pre-enactment explorers will be established pursuant to subpart C of this part.

(2) Priority of right for issuance of licenses to new entrants will be established on the basis of the chronological order in which license applications, which are in substantial compliance with the requirements established under this subpart, pursuant to §970.209, are filed with the Administrator.

(3) Applications must be received by the Office of Ocean Minerals and Energy on behalf of the Administrator before a priority can be established.

(4) Upon (i) a determination that:

(A) An application is not in substantial compliance in accordance with §970.209 or subpart C, as applicable;

(B) An application has not been brought into substantial compliance in accordance with §970.210 or subpart C, as applicable;

(C) A license has been relinquished or surrendered in accordance with §970.903; or

(ii) A decision to:

(A) Deny certification of a license pursuant to §970.407; or

(B) Deny issuance of a license pursuant to §970.508,

and after the exhaustion of any administrative or judicial review of such determination or decision, the priority of right for issuance of a license will lapse.

(f) *Request for confidential treatment of information.* If an applicant wishes to have any information in his application treated as confidential, he must so indicate pursuant to 15 CFR 971.802.

[46 FR 45898, Sept. 15, 1981, as amended at 47 FR 5968, Feb. 9, 1982; 54 FR 547, Jan. 6, 1989]

CONTENTS

**§ 970.201 Statement of financial resources.**

(a) *General.* The application must contain information sufficient to demonstrate to the Administrator the financial resources of the applicant to carry out, in accordance with this part, the exploration program set forth in the applicant's exploration plan. The information must show that the applicant is reasonably capable of committing or raising sufficient resources to cover the estimated costs of the exploration program. The information must be sufficient for the Administrator to make a determination on the applicant's financial responsibility pursuant to §970.401.

(b) *Contents.* In particular, the information on financial resources must include:

(1) A description of how the applicant intends to finance the exploration program;

(2) The estimated cost of the exploration program;

(3) With respect to the applicant and those entities upon which the applicant will rely to finance his exploration activities, the most recent audited financial statement (for publicly-held companies, the most recent annual report and Form 10–K filed with the Securities and Exchange Commission will suffice in this regard); and

(4) The credit rating and bond rating of the applicant, and such financing entities, to the extent they are relevant.

**§ 970.202 Statement of technological experience and capabilities.**

(a) *General.* The application must contain information sufficient to demonstrate to the Administrator the technological capability of the applicant to carry out, in accordance with the regulations contained in this part, the exploration program set out in the applicant's exploration plan. It must contain sufficient information for the

Administrator to make a determination on the applicant's technological capability pursuant to § 970.402.

(b) *Contents.* In particular, the information submitted pursuant to this section must demonstrate knowledge and skills which the applicant either possesses or to which he can demonstrate access. The information must include:

(1) A description of the exploration equipment to be used by the applicant in carrying out the exploration program;

(2) A description of the environmental monitoring equipment to be used by the applicant in monitoring the environmental effects of the exploration program; and

(3) The experience on which the applicant will rely in using this or similar equipment.

### § 970.203 Exploration plan.

(a) *General.* Each application must include an exploration plan which describes the applicant's projected exploration activities during the period to be covered by the proposed license. Generally, the exploration plan must demonstrate to a reasonable extent that the applicant's efforts, by the end of the 10-year license period, will likely lead to the ability to apply for and obtain a permit for commercial recovery. In particular, the plan must include sufficient information for the Administrator, pursuant to this part, to make the necessary determinations pertaining to the certification and issuance or transfer of a license and to the development and enforcement of the terms, conditions and restrictions for a license.

(b) *Contents.* The exploration plan must contain the following information. In presenting this information, the plan should incorporate the applicant's proposed individual approach, including a general description of how projected participation by other entities will relate to the following elements, if appropriate. The plan must present:

(1) The activities proposed to be carried out during the period of the license;

(2) A description of the area to be explored, including its delineation according to § 970.601;

(3) The intended exploration schedule which must be responsive to the diligence requirements in § 970.602. Taking into account that different applicants may have different concepts and chronologies with respect to the types of activities described, the schedule should include an approximate projection for the exploration activities planned. Although the details in each schedule may vary to reflect the applicant's particular approach, it should address in some respect approximately when each of the following types of activities is projected to occur.

(i) Conducting survey cruises to determine the location and abundance of nodules as well as the sea floor configuration, ocean currents and other physical characteristics of potential commercial recovery sites;

(ii) Assaying nodules to determine their metal contents;

(iii) Designing and testing system components onshore and at sea;

(iv) Designing and testing mining systems which simulate commercial recovery;

(v) Designing and testing processing systems to prove concepts and designing and testing systems which simulate commercial processing;

(vi) Evaluating the continued feasibility of commercial scale operations based on technical, economic, legal, political and environmental considerations; and

(vii) Applying for a commercial recovery permit and, to the extent known, other permits needed to construct and operate commercial scale facilities (if application for such permits is planned prior to obtaining a commercial recovery permit);

(4) A description of the methods to be used to determine the location, abundance, and quality (i.e., assay) of nodules, and to measure physical conditions in the area which will affect nodule recovery system design and operations (e.g., seafloor topography, seafloor geotechnic properties, and currents);

(5) A general description of the developing recovery and processing technology related to the proposed license, and of any planned or ongoing testing and evaluation of such technology. To

the extent possible at the time of application, this description should address such factors as nodule collection technique, seafloor sediment rejection subsystem, mineship nodule separation scheme, pumping method, anticipated equipment test areas, and details on the testing plan;

(6) An estimated schedule of expenditures, which must be responsive to the diligence requirements as discussed in § 970.602;

(7) Measures to protect the environment and to monitor the effectiveness of environmental safeguards and monitoring systems for commercial recovery. These measures must take into account the provisions in §§ 970.506, 970.518, 970.522 and subpart G of this part; and

(8) A description of any relevant activity that the applicant has completed prior to the submission of the application.

### § 970.204 Environmental and use conflict analysis.

(a) *Environmental information.* To enable NOAA to implement better its responsibility under section 109(d) of the Act to develop an environmental impact statement (EIS) on the issuance of an exploration license, the application must include information for use in preparing NOAA's EIS on the environmental impacts of the activities proposed by the applicant. The applicant must present physical, chemical and biological information for the exploration area. This information should include relevant environmental information, if any, obtained during past exploration activities, but need not duplicate information obtained during NOAA's DOMES Project. Planned activities in the area, including the testing of integrated mining systems which simulate commercial recovery, also must be described. NOAA will need information with the application on location and boundaries of the proposed exploration area, and plans for delineation of features of the exploration area including baseline data or plans for acquiring them. The applicant may at his option delay submission of baseline and equipment data and system test plans. However, applicants so electing should plan to submit this latter information at least one year prior to the initial test, to allow time for the supplement to the site-specific EIS, if one is required, to be prepared by NOAA, circulated, reviewed and filed with EPA. The submission of this information with the application is strongly encouraged, however, to minimize the possibility that a supplement will be required. If such latter information is submitted subsequent to the original application such tests may not be undertaken in the absence of concurrence by NOAA (which, if applicable, will be required in a term, condition, or restriction in the license). NOAA has developed a technical guidance document which will provide assistance for the agency and the applicant, in consultation, to identify the details on information needed in each case. NOAA may refer to such information for purposes of other determinations under the Act as well. NOAA also will seek to facilitate other Federal and, as necessary, state decisions on exploration activities by functioning as lead agency for the EIS on the application and related actions by other agencies, including those pertaining to any onshore impacts which may result from the proposed exploration activities.

(b) *Use conflict information.* To assist the Administrator in making determinations relating to potential use conflicts between the proposed exploration and other activities in the exploration area, pursuant to §§ 970.503, 970.505, and 970.520, the application must include information known to the applicant with respect to such other activities.

### § 970.205 Vessel safety.

In order to provide a basis for the necessary determinations with respect to the safety of life and property at sea, pursuant to §§ 970.507, 970.521 and subpart H of this part, the application must contain the following information, except for those vessels under 300 gross tons which are engaged in oceanographic research if they are used in exploration.

(a) *U.S. flag vessel.* The application must contain a demonstration or affirmation that any United States flag vessel utilized in exploration activities will possess a current valid Coast

Guard Certificate of Inspection (COI). To the extent that the applicant knows which United States flag vessel he will be using, the application must include a copy of the COI.

(b) *Foreign flag vessel.* The application must also contain information on any foreign flag vessels to be used in exploration activities, which responds to the following requirements. To the extent that the applicant knows which foreign flag vessel he will be using, the application must include evidence of the following:

(1) That any foreign flag vessel whose flag state is party to the International Convention for Safety of Life at Sea, 1974 (SOLAS 74) possesses current valid SOLAS 74 certificates;

(2) That any foreign flag vessel whose flag state is not party to SOLAS 74 but is party to the International Convention for the Safety of Life at Sea, 1960 (SOLAS 60) possesses current valid SOLAS 60 certificates; and

(3) That any foreign flag vessel whose flag state is not a party to either SOLAS 74 or SOLAS 60 meets all applicable structural and safety requirements contained in the published rules of a member of the International Association of Classification Societies (IACS).

(c) *Supplemental certificates.* If the applicant does not know at the time of submitting an application which vessels he will be using, he must submit the applicable certification for each vessel before the cruise on which it will be used.

### § 970.206 Statement of ownership.

The application must include sufficient information to demonstrate that the applicant is a United States citizen, as required by § 970.103(b)(6), and as defined in § 970.101(t). In particular, the application must include:

(a) Name, address, and telephone number of the United States citizen responsible for exploration operations to whom notices and orders are to be delivered; and

(b) A description of the citizen or citizens engaging in such exploration, including:

(1) Whether the citizen is a natural person, partnership, corporation, joint venture, or other form of association;

(2) The state of incorporation or state in which the partnership or other business entity is registered;

(3) The name of registered agent or equivalent representative and places of business;

(4) Certification of essential and nonproprietary provisions in articles of incorporation, charter or articles of association; and

(5) The name of each member of the association, partnership, or joint venture, including information about the participation of each partner and joint venturer and/or ownership of stock.

### § 970.207 Antitrust information.

(a) *General.* Section 103(d) of the Act specifically provides for antitrust review of applications by the Attorney General of the United States and the Federal Trade Commission.

(b) *Contents.* In order to provide information for this antitrust review, the application must contain the following:

(1) A copy of each agreement between any parties to any joint venture which is applying for a license, provided that said agreement relates to deep seabed hard mineral resource exploration or mining;

(2) The identity of any affiliate of any person applying for a license; and

(3) For each applicant, its affiliate, or parent or subsidiary of an affiliate which is engaged in production in, or the purchase or sale in or to, the United States of copper, nickel, cobalt or manganese minerals or any metals refined from these minerals:

(i) The annual tons and dollar value of any of these minerals and metals so purchased, sold or produced for the two preceding years;

(ii) Copies of the annual report, balance sheet and income statement for the two preceding years; and

(iii) Copies of each document submitted to the Securities and Exchange Commission.

### § 970.208 Fee.

(a) *General.* Section 104 of the Act provides that no application for the issuance or transfer of an exploration license will be certified unless the applicant pays to NOAA a reasonable administrative fee, which must reflect

the reasonable administrative costs incurred in reviewing and processing the application.

(b) *Amount.* In order to meet this requirement, the application must include a fee payment of $100,000, payable to the National Oceanic and Atmospheric Administration, Department of Commerce. If costs incurred by NOAA in reviewing and processing an application are significantly less than or in excess of the original fee, the agency subsequently will determine those differences in costs and adjust the fee accordingly. If the costs are significantly less, NOAA will refund the difference. If they are significantly greater, the applicant will be required to submit the additional payment prior to issue or transfer of the license. In the case of an application for transfer of a license to an entity which has previously been found qualified for a license, the Administrator may, on the basis of preapplication consultations pursuant to § 970.200(d), reduce the fee in advance by an appropriate amount which reflects costs avoided by reliance on previous findings made in relation to the proposed transferee. If an applicant elects to pursue the 'banking' option under § 970.601(d), and exercises that option by submitting two applications, only one application fee needs to be submitted with respect to each use of the 'banking' option.

[46 FR 45898, Sept. 15, 1981, as amended at 47 FR 5966, 5968, Feb. 9, 1982]

PROCEDURES

### § 970.209 Substantial compliance with application requirements.

(a) Priority of right for the issuance of licenses to new entrants will be established on the basis of the chronological order in which license applications which are in substantial compliance with the requirements established under this subpart are filed with the Administrator pursuant to § 970.200.

(b) In order for an application to be in substantial compliance with the requirements of this subpart, it must include information specifically identifiable with and materially responsive to each requirement contained in §§ 970.201 through 970.208. A determination on substantial compliance relates only to whether the application contains the required information, and does not constitute a determination on certification of the application, or on issuance or transfer of a license.

(c) The Administrator will make a determination as to whether the application is in substantial compliance. Within 30 days after receipt of an application and the opening of coordinates describing the application area, he will issue written notice to the applicant regarding such determination. The notice will identify, if applicable, in what respects the application is not in either full or substantial compliance. If the application is in substantial but not full compliance, the notice will specify the information which the applicant must submit in order to bring it into full compliance, and why the additional information is necessary.

[46 FR 45898, Sept. 15, 1981, as amended at 47 FR 11513, Mar. 17, 1982]

### § 970.210 Reasonable time for full compliance.

Priority of right will not be lost in case of any application filed which is in substantial but not full compliance, as specified in § 970.209, if the Administrator determines that the applicant, within 60 days after issuance to the applicant by the Administrator of written notice that the application is in substantial but not full compliance, has brought the application into full compliance with the requirements of §§ 970.201 through 970.208.

[46 FR 45898, Sept. 15, 1981; 47 FR 5966, Feb. 9, 1982]

### § 970.211 Consultation and cooperation with Federal agencies.

(a) Promptly after his receipt of an application and the opening of coordinates describing the application area, the Administrator will distribute a copy of the application to each other Federal agency or department which, pursuant to section 103(e) of the Act, has identified programs or activities within its statutory responsibilities which would be affected by the activities proposed in the application (i.e., the Departments of State, Transportation, Justice, Interior, Defense,

Treasury and Labor, as well as the Environmental Protection Agency, Federal Trade Commission, Small Business Administration and National Science Foundation). Based on its legal responsibilities and authorities, each such agency or department may, not later than 60 days after it receives a copy of the application which is in full compliance with this subpart, recommend certification of the application, issuance or transfer of the license, or denial of such certification, issuance or transfer. The advice or recommendation by the Attorney General or Federal Trade Commission on antitrust review, pursuant to § 970.207, must be submitted within 90 days after their receipt of a copy of the application which is in full compliance with this subpart. NOAA will use the benefits of this process of consultation and cooperation to facilitate necessary Federal decisions on the proposed exploration activities, pursuant to the mandate of section 103(e) of the Act to reduce the number of separate actions required to satisfy Federal agencies' statutory responsibilities.

(b) In any case in which a Federal agency or department recommends a denial, it will set forth in detail the manner in which the application does not comply with any law or regulation within its area of responsibility and will indicate how the application may be amended, or how terms, conditions or restrictions might be added to the license to assure compliance with such law or regulation.

(c) A recommendation from another Federal agency or department for denying or amending an application will not affect its having been in substantial compliance with the requirements of this subpart, pursuant to § 970.209, for purposes of establishing priority of right. However, pursuant to section 103(e) of the Act, NOAA will cooperate with such agencies and with the applicant with the goal of resolving the concerns raised and satisfying the statutory responsibilities of these agencies.

[46 FR 45898, Sept. 15, 1981, as amended at 47 FR 11513, Mar. 17, 1982]

### § 970.212 Public notice, hearing and comment.

(a) *Notice and comments.* The Administrator will publish in the FEDERAL REGISTER, for each application for an exploration license, notice that such application has been received. Subject to 15 CFR 971.802, interested persons will be permitted to examine the materials relevant to such application. Interested persons will have at least 60 days after publication of such notice to submit written comments to the Administrator.

(b) *Hearings.* (1) After preparation of the draft EIS on an application pursuant to section 109(d) of the Act, the Administrator shall hold a public hearing on the application and the draft EIS in an appropriate location, and may employ such additional methods as he deems appropriate to inform interested persons about each application and to invite their comments thereon.

(2) If the Administrator determines there exists one or more specific and material factual issues which require resolution by formal processes, at least one formal hearing will be held in the District of Columbia metropolitan area in accordance with the provisions of subpart I of 15 CFR part 971. The record developed in any such formal hearing will be part of the basis of the Administrator's decisions on an application.

(c) Hearings held pursuant to this section and other procedures will be consolidated insofar as practicable with hearings held and procedures employed by other agencies.

[46 FR 45898, Sept. 15, 1981, as amended at 54 FR 547, Jan. 6, 1989]

### § 970.213 Amendment to an application.

After an application has been submitted to the Administrator, but before a determination is made on the issuance or transfer of a license, the applicant must submit an amendment to the application if required by a significant change in the circumstances represented in the original application and affecting the requirements of this subpart. Applicants should consult with NOAA to determine if changes in circumstances are sufficiently significant to require submission of an amendment. The application, as amended, would then serve as the basis for determinations by the Administrator under this part. For each

amendment judged by the Administrator to be significant, he will provide a copy of such amendment to each other Federal agency and department which received a copy of the original application, and also will provide for public notice, hearing and comment on the amendment pursuant to §970.212. Such amendment, however, will not affect the priority of right established by the filing of the original application. After the issuance of or transfer of a license, any revision by the licensee will be made pursuant to §970.513.

## Subpart C—Procedures for Applications Based on Exploration Commenced Before June 28, 1980; Resolution of Conflicts Among Overlapping Applications; Applications by New Entrants

SOURCE: 47 FR 24948, July 8, 1982, unless otherwise noted.

### §970.300 Purposes and definitions.

(a) This subpart sets forth the procedures which the Administrator will apply to applications filed with NOAA covering areas of the deep seabed where the applicants have engaged in exploration prior to June 28, 1980, and to the resolution of conflicts arising out of such applications. This subpart also establishes the date on which NOAA will begin to accept applications or amendments filed by new entrants, and certain other procedures for new entrants.

(b) For the purposes of this subpart the term:

(1) *Amendment* means an amendment to an application which changes the area applied for;

(2) *Application* means an application for an exploration license which is filed pursuant to the Act and this subpart;

(3) *Conflict* means the existence of more than one application or amendment with the same priority of right:

(i) Which are filed with the Administrator or with the Administrator and a reciprocating state; and

(ii) In which the deep seabed areas applied for overlap in whole or part, to the extent of the overlap;

(4) *Original conflict* means a conflict solely between or among applications;

(5) *New conflict* means a conflict between or among amendments filed after July 22, 1982, and on or before October 15, 1982;

(6) *Domestic conflict* means a conflict solely between or among applications or amendments which have been filed with the Administrator.

(7) *International conflict* means a conflict arising between or among applications or amendments filed with the Administrator and a reciprocating state.

### §970.301 Requirements for applications based on pre-enactment exploration.

(a) Pursuant to section 101(b) of the Act, any United States citizen who was engaged in exploration before the effective date of the Act (June 28, 1980) qualifies as a pre-enactment explorer and may continue to engage in such exploration without a license:

(1) If such citizen applies under this part for a license with respect to such exploration within the time period specified in paragraph (b) of this section; and

(2) Until such license is issued to such citizen or a final administrative or judicial determination is made affirming the denial of certification of the application for, or issuance of, such license.

(b) Any application for a license based upon pre-enactment exploration must be filed, at the address specified in §970.200(b), no later than 5:00 p.m. EST on March 12, 1982 (or such later date and time as the Administrator may announce by regulation). All such applications filed at or before that time will be deemed to be filed on such closing date.

(c) Applications not filed in accordance with this section will not be considered to be based on pre-enactment exploration, and may be filed only as new entrant applications under §970.303.

(d) To receive a pre-enactment explore priority of right for issuance of a license, and application must be, when filed, in substantial compliance with requirements described in §970.209(b). An application which is in substantial but not full compliance will not lose its priority of right if it is brought into full compliance according to §970.210.

(e) Any application based on pre-enactment exploration must be for a reasonably compact area with respect to which the applicant is a pre-enactment explorer, and, notwithstanding any part of § 970.601 which indicates otherwise, such area must be bounded by a single continuous boundary.

(f) The coordinates and any chart of the logical mining unit applied for in an application based on a pre-enactment exploration must be submitted in a separate, sealed envelope.

(g) On or before March 12, 1982, the applicants must indicate to the Administrator, other than in the sealed portion of the application:

(1) The size of the area applied for;

(2) Whether the applicant or any person on the applicant's behalf has applied, or intends to apply, for the same area or substantially the same area to one or more nations, and the number of such other applications; and

(3) Whether the other applicant is pursuing the ''banking'' option under § 970.601(d), and the number of applications filed, or to be filed, in pursuit of the ''banking'' option.

### § 970.302 Procedures and criteria for resolving conflicts.

(a) *General.* This section governs the resolution of all conflicts between or among applications or amendments having pre-enactment explorer priority of right.

(b) *Identification of applicants.* On June 21, 1982, the Administrator will meet with representatives of reciprocating states to identify their respective pre-enactment explorer applicants, and will identify the coordinates of the application areas applied for by such applicants.

(c) *Initial processing.* On or before July 13, 1982, the Administrator will determine whether each domestic application is entitled to a priority of right based on pre-enactment exploration in accordance with § 970.301.

(d) *Identification of conflicts.* On July 14, 1982, the Administrator will meet with representatives of reciprocating states to exchange lists of applications accorded pre-enactment explorer priorities of right, and will identify any conflicts existing among such applications.

(e) *Notification to applicants of conflicts.* If the Administrator identifies a conflict, he will send, no later than July 22, 1982, written notice of the conflict to each domestic applicant involved in the conflict. The notice will:

(1) Identify each applicant involved in the conflict in question:

(2) Identify the coordinates of the portions of the application areas which are in conflict;

(3) Indicate that the applicant may request from the Administrator the coordinates of the application areas from any other applications filed with the Administrator or with a reciprocating state (such coordinates will be provided subject to appropriate confidentiality arrangements);

(4) State whether;

(i) Each domestic application involved in the conflict is in substantial or, if known, full compliance with the requirements described in § 970.209(b); and

(ii) Each foreign application involved in the conflict meets, if known, the legal requirements of the reciprocating state in which it is filed;

(5) Notify each domestic applicant involved in a conflict that he may, after July 22, 1982, and on or before November 16, 1982, resolve the conflict voluntarily according to paragraph (f) of this section, and that on or after November 17, 1982, any unresolved conflict shall be resolved in accordance with paragraph (j) or (k) of this section, as applicable; and

(6) In the case of an international conflict, include a copy of any applicable conflict resolution procedures in force between the United States and its reciprocating states pursuant to section 118 of the Act.

(f) *Voluntary resolution of conflicts.* Each U.S. applicant involved in a conflict may resolve the conflict after July 22, 1982, and on or before November 16, 1982, by:

(1) Unilaterally, or by agreement with each other applicant involved in the conflict, filing an amendment to the application eliminating the conflict; or

(2) Agreeing in writing with the other applicant(s) involved in the conflict to submit it to an agreed binding conflict resolution procedure.

(g) *Amendments.* (1) Amendments must be filed in accordance with the requirements for applications described in § 970.200.

(2) The Administrator will:

(i) Accept no amendment prior to July 23, 1982;

(ii) Accord pre-enactment explorer priority of right only to amendments which:

(A) Pertain to areas with respect to which the applicant has engaged in pre-enactment exploration;

(B) Resolve an existing conflict with respect to that application;

(C) Do not apply for an area included in an application filed pursuant to § 970.301 which is accorded pre-enactment explorer priority of right or an application identified pursuant to § 970.302(b) which has been filed with a reciprocating state; and

(D) Are filed on or before October 15, 1982; and

(iii) Accord amendments which meet the requirements of this paragraph (g) the same priority of right as the applications to which they pertain.

(3) The area applied for in an amendment need not be adjacent to the area applied for in the original application.

(4) Amendments not accorded pre-enactment explorer priority of right may be filed as new entrant amendments under § 970.303.

(h) *Notification of amendments and new conflicts.* The Administrator will:

(1) No later than October 25, 1982, notify each reciprocating state of any amendment accorded pre-enactment explorer priority of right pursuant to paragraph (g) of this section and, in cooperation with such states, identify any new conflicts;

(2) No later than October 27, 1982, notify each domestic applicant who is involved in a new conflict. The notice will:

(i) Identify each applicant with whom each new conflict has arisen;

(ii) Identify the coordinates of each area in which the applicant is involved in a new conflict;

(iii) Indicate that the applicant may request from the Administrator the coordinates of each area included in an amendment accorded pre-enactment explorer priority of right pursuant to paragraph (g) of this section, or for which notice has been received from a reciprocating state (such coordinates will be provided subject to appropriate confidentiality arrangements);

(iv) Notify the applicant that he may, on or before November 16, 1982, resolve the conflict voluntarily according to paragraph (f) of this section, and that on or after November 17, 1982, any unresolved conflict shall be resolved in accordance with paragraph (j) or (k) of this section, as applicable; and

(v) In the case of an international conflict, include a copy of any applicable conflict resolution procedures in force between the United States and its reciprocating states pursuant to section 118 of the Act.

(i) *Government assistance in resolving international conflicts.* If, by October 26 1982, the applicants have not resolved, or agreed in writing to a specified binding procedure to resolve, an original international conflict, or new international conflict, the Administrator, the Secretary of State of the United States, and appropriate officials of the government of the reciprocating state to which the other applicant involved in the conflict applied will use their good offices to assist the applicants to resolve the conflict. After November 16, 1982, any unresolved international conflicts will be resolved in accordance with paragraph (k) of this section.

(j) *Unresolved domestic conflict*—(1) *Procedure.* (i) In the case of an original domestic conflict or a new domestic conflict, the applicants will be allowed until April 15, 1983, to resolve the conflict or agree in writing to submit the conflict to a specified binding conflict resolution procedure. If, by April 15, 1983, all applicants involved in an original or new domestic conflict have not resolved that conflict, or agreed in writing to submit the conflict to a specified binding conflict resolution procedure, the conflict will be resolved in a formal hearing held in accordance with Subpart I of 15 CFR Part 971, except that:

(A) The General Counsel of NOAA will not, as a matter of right, be a party to the hearing; however, the General Counsel may be admitted to the hearing by the administrative law judge as a party or as an interested

person pursuant to 15 CFR 971.901 (f)(2) or (f)(3); and

(B) The administrative law judge will take such actions as he deems necessary and appropriate to conclude the hearing and transmit a recommended decision to the Administrator in an expeditious manner.

(ii) Notwithstanding the above, at any time on or after November 17, 1982, and on or before April 14, 1983, the applicants involved in the conflict may, by agreement, request the Administrator to resolve the conflict in a formal hearing as described above.

(2) *Decision principles for NOAA formal conflict resolution.* (i) The Administrator shall determine which applicant involved in a conflict between or among pre-enactment explorer applications or amendments shall be awarded all or part of each area in conflict.

(ii) The determination of the Administrator shall be based on the application of principles of equity which take into consideration, with respect to each applicant involved in the conflict, the following factors:

(A) The continuity and extent of activities relevant to each area in conflict and the application area of which it is a part;

(B) The date on which each applicant involved in the conflict, or predecessor in interest or component organization thereof, commenced activities at sea in the application area;

(C) The financial cost of activities relevant to each area in conflict and to the application area of which it is a part, measured in constant dollars;

(D) The time when the activities were carried out, and the quality of the activities; and

(E) Such additional factors as the Administrator determines to be relevant, but excluding consideration of the future work plans of the applicants involved in any conflict.

(iii) For the purposes of this paragraph (j) of this section, the word *activities* means the undertakings, commitments of resources investigations, findings, research, engineering development and other activities relevant to the identification, discovery, and systematic analysis and evaluation of hard mineral resources and to the determination of the technical and economic feasibility of commercial recovery.

(iv) When considering the factors specified in paragraph (j)(2)(ii) of this section, the Administrator shall hear, and shall (except for purposes of apportionment pursuant to paragraph (j)(2)(v) of this section) limit his consideration to, all evidence based on the activities specified in paragraph (j)(2)(ii) of this section which were conducted on or before January 1, 1982, *Provided, however,* That an applicant must prove at-sea activities in the area in conflict prior to June 28, 1980, as a pre-condition to presentation of further evidence to the Administrator regarding activities in the area in conflict.

(v) In making his determination, the Administrator may award the entire area in conflict to one applicant involved in the conflict, or he may apportion the area among any or all of the applicants involved in the conflict. If, after applying the principles of equity, the Administrator determines that the area in conflict should be apportioned, the Administrator shall (to the maximum extent practicable consistent with the Administrator's application of the principles of equity) apportion the area in a manner designed to satisfy the plan of work set forth in the application of each applicant which is awarded part of the area.

(vi) Each applicant involved in the conflict must file an amendment to its application if necessary to implement the determination made by the Administrator.

(k) *Unresolved international conflicts.* (1) If, by November 17, 1982, all applicants involved in an original or new international conflict have not resolved that conflict, or agreed in writing to submit the conflict to a specified binding conflict resolution procedure, the applicants shall proceed in accordance with the conflict resolution procedures agreed to between the United States and its reciprocating states pursuant to section 118 of the Act.

(2) Each applicant whose application is involved in an international conflict shall be responsible for actions required in the conduct of the conflict

resolution procedures, including bearing a proportional cost of implementing the procedures, representing himself in any proceedings, and assisting in the selection of arbitrators if necessary.

(l) *Continued opportunity for voluntary resolutions.* Each applicant may resolve any conflict by voluntary procedures at any time while that conflict persists.

(m) *Effect on priorities of new entrants.* (1) A pre-enactment explorer is entitled to a priority of right over a new entrant for any area in which the pre-enactment explorer has engaged in exploration prior to June 28, 1980 if, with respect to that area, the pre-enactment explorer files an application in accordance with this part on or after January 25, 1982 and on or before the closing date for pre-enactment explorer applications established under § 970.301(b).

(2) Any amendment which is filed by a pre-enactment explorer on or before October 15, 1982, relates back to the date of filing of the original application and shall give the pre-enactment explorer priority of right over all new entrants if the amendment is accorded a pre-enactment explorer priority of right under paragraph (g) of this section.

[47 FR 24948, July 8, 1982, as amended at 54 FR 548, Jan. 6, 1989]

### § 970.303 Procedures for new entrants.

(a) *Filing of new entrant applications or amendments; priority of right.* New entrant applications or amendments must be filed in accordance with § 970.200. A new entrant may file an application or amendment only at or after 1500 hours G.m.t. (11:00 a.m. EDT) January 3, 1983. All applications or amendments filed at that time shall be deemed to be filed simultaneously, and, if in accordance with § 970.209, shall have priority of right over any application or amendment filed subsequently. Priority of right for any application or amendment filed after that time will be established as described in § 970.209.

(b) *Conflicts.* (1) If a domestic conflict exists between or among new entrant applications or amendments, the applicants involved in the conflict shall resolve it.

(2) If an international conflict exists between or among new entrant applications or amendments, the conflict shall be resolved in accordance with applicable conflict resolution procedures agreed to between the United States and its reciprocating States pursuant to section 118 of the Act. The Administrator will provide each domestic applicant involved in an international conflict a copy of any such procedures in force when the Administrator issues notice to the applicant that an international conflict exists. Each applicant whose application is involved in an international conflict shall be responsible for actions required in the conduct of the conflict resolution procedures, including bearing a proportional cost of implementing the procedures, representing himself in any proceedings, and assisting in the selection of arbitrators if necessary.

### § 970.304 Action on portions of applications or amendments not in conflict.

If an applicant so requests, the Administrator will proceed in accordance with this part to review that portion of an area included in an application or amendment that is not involved in a conflict. However, the Administrator will proceed with such review only if the applicant advises the Administrator in writing that the applicant will continue to seek a license for the proposed exploration activities in the portion of the application area that is not in conflict. To the extent practicable, the deadlines for certification of an application or amendment and issuance of a license provided in § 970.400 and § 970.500, respectively, will run from the date of filing of the original application.

## Subpart D—Certification of Applications

SOURCE: 46 FR 45902, Sept. 15, 1981, unless otherwise noted.

### § 970.400 General.

(a) Certification is an intermediate step between receipt of an application for issuance or transfer of a license and its actual issuance or transfer. It is a

determination which focuses on the eligibility of the applicant.

(b) Before the Administrator may certify an application for issuance or transfer of a license, he must determine that issuance of the license would not violate any of the restrictions in § 970.103(b). He also must make written determinations with respect to the requirements set forth in §§ 970.401 through 970.406. This will be done after consultation with other departments and agencies pursuant to § 970.211.

(c) To the maximum extent possible, the Administrator will endeavor to complete certification of an application within 100 days after submission of an application which is in full compliance with Subpart B of this part. If final certification or denial of certification has not occurred within 100 days after such submission of the application, the Administrator will inform the applicant in writing of the pending unresolved issues, the agency's efforts to resolve them, and an estimate of the time required to do so.

### § 970.401 Financial responsibility.

(a) Before the Administrator may certify an application for an exploration license he must find that the applicant has demonstrated that, upon issuance or transfer of the license, the applicant will be financially responsible to meet all obligations which he may require to engage in the exploration proposed in the application.

(b) In order for the Administrator to make this determination, the applicant must show to the Administrator's satisfaction that he is reasonably capable of committing or raising sufficient resources to carry out, in accordance with the provisions contained in this part, the exploration program set forth in his exploration plan.

### § 970.402 Technological capability.

(a) Before the Administrator may certify an application for an exploration license, he must find that the applicant has demonstrated that, upon issuance or transfer of the license, the applicant will possess, or have access to or a reasonable expectation of obtaining, the technological capability to engage in the proposed exploration.

(b) In order for the Administrator to make this determination, the applicant must demonstrate to the Administrator's satisfaction that the applicant will possess or have access to, at the time of issuance or transfer of the license, the technology and expertise, as needed, to carry out the exploration program set forth in his exploration plan.

### § 970.403 Previous license and permit obligations.

In order to certify an application, the Administrator must find that the applicant has satisfactorily fulfilled all past obligations under any license or permit previously issued or transferred to the applicant under the Act.

### § 970.404 Adequate exploration plan.

Before he may certify an application, the Administrator must find that the proposed exploration plan of the applicant meets the requirements of § 970.203.

### § 970.405 Appropriate exploration site size and location.

Before the Administrator may certify an application, he must approve the size and location of the exploration area selected by the applicant. The Administrator will approve the size and location of the area unless he determines that the area is not a logical mining unit pursuant to § 970.601.

### § 970.406 Fee payment.

Before the Administrator may certify an application, he must find that the applicant has paid the license fee as specified in § 970.208.

### § 970.407 Denial of certification.

(a) The Administrator may deny certification of an application if he finds that the requirements of this subpart have not been met. If, in the course of reviewing an application for certification, the Administrator becomes aware of the fact that one or more of the requirements for issuance or transfer under §§ 970.503 through 970.507 will not be met, he may also deny certification of the application.

(b) When the Administrator proposes to deny certification he will send to

the applicant, and publish in the FEDERAL REGISTER, written notice of intention to deny certification. Such notice will include:

(1) The basis upon which the Administrator proposes to deny certification; and

(2) If the basis for the proposed denial is a deficiency which the Administrator believes the applicant can correct:

(i) The action believed necessary to correct the deficiency; and

(ii) The time within which any correctable deficiency must be corrected (the period of time may not exceed 180 days except as specified by the Administrator for good cause).

(c) The Administrator will deny certification:

(1) On the 30th day after the date the notice is sent to the applicant, under paragraph (b) of this section, unless before such 30th day the applicant files with the Administrator a written request for an administrative review of the proposed denial; or

(2) On the last day of the period established under paragraph (b)(2)(ii) of this section in which the applicant must correct a deficiency, if such deficiency has not been corrected before such day and an administrative review requested pursuant to paragraph (c)(1) of this section is not pending or in progress.

(d) If a timely request for administrative review of the proposed denial is made by the applicant under paragraph (c)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with Subpart I of 15 CFR part 971. If the proposed denial is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempts to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

(e) If the Administrator denies certification, he will send to the applicant written notice of the denial, including the reasons therefor.

(f) Any final determination by the Administrator granting or denying certification is subject to judicial review as provided in Chapter 7 of Title 5, United States Code.

[46 FR 45902, Sept. 15, 1981, as amended at 54 FR 547, Jan. 6, 1989]

### § 970.408 Notice of certification.

Upon making a final determination to certify an application for an exploration license, the Administrator will promptly send written notice of his determination to the applicant.

## Subpart E—Issuance/Transfer/ Terms, Conditions and Restrictions

SOURCE: 46 FR 45903, Sept. 15, 1981, unless otherwise noted.

### § 970.500 General.

(a) *Proposal.* After certification of an application pursuant to Subpart D of this part, the Administrator will proceed with a proposal to issue or transfer a license for the exploration activities described in the application.

(b)(1) *Terms, conditions and restrictions.* Within 180 days (or such longer period as the Administrator may establish for good cause shown in writing) after certification, the Administrator will propose terms and conditions for, and restrictions on, the proposed exploration which are consistent with the provisions of the Act and this part as set forth in §§ 970.517 through 970.524. Proposed and final terms, conditions and restrictions will be uniform in all licenses, except to the extent that differing physical and environmental conditions require the establishment of special terms, conditions and restrictions for the conservation of natural resources, protection of the environment, or the safety of life and property at sea. The Administrator will propose these in writing to the applicant. Also, public notice thereof will be provided pursuant to § 970.501, and they will be included with the draft of the EIS on the issuance of a license which is required by section 109(d) of the Act.

(2) If the Administrator does not propose terms, conditions and restrictions within 180 days after certification, he will notify the applicant in writing of the reasons for the delay and will indicate the approximate date on which

the proposed terms, conditions and restrictions will be completed.

(c) *Findings.* Before issuing or transferring an exploration license, the Administrator must make written findings in accordance with the requirements of §§ 970.503 through 970.507. These findings will be made after considering all information submitted with respect to the application and proposed issuance or transfer. He will make a final determination on issuance or transfer of a license, and will publish a final EIS on that action, within 180 days (or such longer period of time as he may establish for good cause shown in writing) following the date on which proposed terms, conditions and restrictions, and the draft EIS, are published.

ISSUANCE/TRANSFER; MODIFICATION/REVISION; SUSPENSION/REVOCATION

### § 970.501 Proposal to issue or transfer and of terms, conditions and restrictions.

(a) *Notice and comment.* The Administrator will publish in the FEDERAL REGISTER notice of each proposal to issue or transfer, and of terms and conditions for, and restrictions on, an exploration license. Subject to 15 CFR 971.802, interested persons will be permitted to examine the materials relevant to such proposals. Interested persons will have at least 60 days after publication of such notice to submit written comments to the Administrator.

(b) *Hearings.* (1) The Administrator will hold a public hearing in an appropriate location and may employ such additional methods as he deems appropriate to inform interested persons about each proposal and to invite their comments thereon.

(2) If the Administrator determines there exists one or more specific and material factual issues which require resolution by formal processes, at least one formal hearing will be held in the District of Columbia metropolitan area in accordance with the provisions of subpart I of 15 CFR part 971. The record developed in any such formal hearing will be part of the basis for the Administrator's decisions on issuance or transfer of, and of terms, conditions and restrictions for the license.

(c) Hearings held pursuant to this section will be consolidated insofar as practicable with hearings held by other agencies.

[46 FR 45903, Sept. 15, 1981, as amended at 54 FR 548, Jan. 6, 1989]

### § 970.502 Consultation and cooperation with Federal agencies.

Prior to the issuance or transfer of an exploration license, the Administrator will continue the consultation and cooperation with other Federal agencies which were initiated pursuant to § 970.211. This consultation will be to assure compliance with, among other statutes, the Endangered Species Act of 1973, as amended, the Marine Mammal Protection Act of 1972, as amended, and the Fish and Wildlife Coordination Act. He also will consult, prior to any issuance, transfer, modification or renewal of a license, with any affected Regional Fishery Management Council established pursuant to section 302 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852) if the activities undertaken pursuant to such license could adversely affect any fishery within the Fishery Conservation Zone, or any anadromous species or Continental Shelf fishery resource subject to the exclusive management authority of the United States beyond such zone.

### § 970.503 Freedom of the high seas.

(a) Before issuing or transferring an exploration license, the Administrator must find that the exploration proposed in the application will not unreasonably interfere with the exercise of the freedoms of the high seas by other nations, as recognized under general principles of international law.

(b) In making this finding, the Administrator will recognize that exploration for hard mineral resources of the deep seabed is a freedom of the high seas. In the exercise of this right, each licensee must act with reasonable regard for the interests of other nations in their exercise of the freedoms of the high seas.

(c)(1) In the event of a conflict between the exploration program of an applicant or licensee and a competing use of the high seas by another nation or its nationals, the Administrator, in

consultation and cooperation with the Department of State and other interested agencies, will enter into negotiations with that nation to resolve the conflict. To the maximum extent possible the Administrator will endeavor to resolve the conflict in a manner that will allow both uses to take place in a manner in which neither will unreasonably interfere with the other.

(2) If both uses cannot be conducted harmoniously in the area subject to the exploration plan, the Administrator will decide whether to issue or transfer the license.

### § 970.504 International obligations of the United States.

Before issuing or transferring an exploration license, the Administrator must find that the exploration proposed in the application will not conflict with any international obligation of the United States established by any treaty or international convention in force with respect to the United States.

### § 970.505 Breach of international peace and security involving armed conflict.

Before issuing or transferring an exploration license, the Administrator must find that the exploration proposed in the application will not create a situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict.

### § 970.506 Environmental effects.

Before issuing or transferring an exploration license, the Administrator must find that the exploration proposed in the application cannot reasonably be expected to result in a significant adverse effect on the quality of the environment, taking into account the analyses and information in any applicable EIS prepared pursuant to section 109(c) or 109(d) of the Act. This finding also will be based upon the considerations and approach in § 970.701.

### § 970.507 Safety at sea.

Before issuing or transferring an exploration license, the Administrator must find that the exploration proposed in the application will not pose an inordinate threat to the safety of life and property at sea. This finding will be based on the requirements reflected in §§ 970.205 and 970.801.

### § 970.508 Denial of issuance or transfer.

(a) The Administrator may deny issuance or transfer of a license if he finds that the applicant or the proposed exploration activities do not meet the requirements of this part for the issuance or transfer of a license.

(b) When the Administrator proposes to deny issuance or transfer, he will send to the applicant, and publish in the FEDERAL REGISTER, written notice of such intention to deny issuance or transfer. Such notice will include:

(1) The basis upon which the Administrator proposes to deny issuance or transfer; and

(2) If the basis for the proposed denial is a deficiency which the Administrator believes the applicant can correct:

(i) The action believed necessary to correct the deficiency; and

(ii) The time within which any correctable deficiency must be corrected (the period of time may not exceed 180 days except as specified by the Administrator for good cause).

The FEDERAL REGISTER notice will not include the coordinates of the proposed exploration area.

(c) The Administrator will deny issuance or transfer:

(1) On the 30th day after the date the notice is sent to the applicant under paragraph (b) of this section, unless before such 30th day the applicant files with the Administrator a written request for an administrative review of the proposed denial; or

(2) On the last day of the period established under paragraph (b)(2)(ii) of this section in which the applicant must correct a deficiency, if such deficiency has not been corrected before such day and an administrative review requested pursuant to paragraph (c)(1) of this section is not pending or in progress.

(d) If a timely request for administrative review of the proposed denial is made by the applicant under paragraph (c)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with subpart I of 15 CFR

part 971. If the proposed denial is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempt to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

(e) If the Administrator denies issuance or transfer, he will send to the applicant written notice of the denial, including the reasons therefor.

(f) Any final determination by the Administrator granting or denying issuance of a license is subject to judicial review as provided in chapter 7 of title 5, United States Code.

[46 FR 45903, Sept. 15, 1981, as amended at 54 FR 548, Jan. 6, 1989]

### § 970.509 Notice of issuance or transfer.

If the Administrator finds that the requirements of this part have been met, he will issue or transfer the license along with the appropriate terms, conditions and restrictions. Notification thereof will be made in writing to the applicant and in the FEDERAL REGISTER.

### § 970.510 Objections to terms, conditions and restrictions.

(a) The licensee may file a notice of objection to any term, condition or restriction in the license. The licensee may object on the grounds that any term, condition or restriction is inconsistent with the Act or this part, or on any other grounds which may be raised under applicable provisions of law. If the licensee does not file notice of an objection within the 60-day period immediately following the licensee's receipt of the notice of issuance or transfer under § 970.509, he will be deemed conclusively to have accepted the terms, conditions and restrictions in the license.

(b) Any notice of objection filed under paragraph (a) of this section must be in writing, must contain the precise legal basis for the objection, and must provide information relevant to any underlying factual issues deemed by the licensee as necessary to the Administrator's decision upon the objection.

(c) Within 90 days after receipt of the notice of objection, the Administrator will act on the objection and publish in the FEDERAL REGISTER, as well as provide to the licensee, written notice of his decision.

(d) If, after the Administrator takes final action on an objection, the licensee demonstrates that a dispute remains on a material issue of fact, the Administrator will provide for a formal hearing which will proceed in accordance with subpart I of 15 CFR part 971.

(e) Any final determination by the Administrator on an objection to terms, conditions or restrictions in a license after the formal hearing provided in paragraph (d) of this section is subject to judicial review as provided in chapter 7 of title 5, United States Code.

[46 FR 45903, Sept. 15, 1981, as amended at 54 FR 548, Jan. 6, 1989]

### § 970.511 Suspension or modification of activities; suspension or revocation of licenses.

(a) The Administrator may:

(1) In addition to, or in lieu of, the imposition of any civil penalty under subpart J of 15 CFR part 971, or in addition to the imposition of any fine under subpart J, suspend or revoke any license issued under this part, or suspend or modify any particular activities under such a license, if the licensee substantially fails to comply with any provision of the Act, this part, or any term, condition or restriction of the license; and

(2) Suspend or modify particular activities under any license, if the President determines that such suspension or modification is necessary:

(i) To avoid any conflict with any international obligation of the United States established by any treaty or convention in force with respect to the United States; or

(ii) To avoid any situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict.

(b) Any action taken by the Administrator in accordance with paragraph (a)(1) will proceed pursuant to the procedures in 15 CFR 971.1003. Any action taken in accordance with paragraph (a)(2) will proceed pursuant to paragraphs (c) through (i) of this section, other than paragraph (h)(2).

(c) Prior to taking any action specified in paragraph (a)(2) of this section the Administrator will publish in the FEDERAL REGISTER, and send to the licensee, written notice of the proposed action. The notice will include:

(1) The basis of the proposed action; and

(2) If the basis for the proposed action is a deficiency which the Administrator believes the licensee can correct:

(i) The action believed necessary to correct the deficiency; and

(ii) The time within which any correctable deficiency must be corrected (this period of time may not exceed 180 days except as specified by the Administrator for good cause).

(d) The Administrator will take the proposed action:

(1) On the 30th day after the date the notice is sent to the licensee, under paragraph (c) of this section, unless before such 30th day the licensee files with the Administrator a written request for an administrative review of the proposed action; or

(2) On the last day of the period established under paragraph (c)(2)(ii) of this section in which the licensee must correct the deficiency, if such deficiency has not been corrected before such day and an administrative review requested pursuant to paragraph (d)(1) of this section is not pending or in progress.

(e) If a timely request for administrative review of the proposed action is made by the licensee under paragraph (d)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with subpart I of 15 CFR part 971. If the proposed action is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempt to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

(f) The Administrator will serve on the licensee, and publish in the FEDERAL REGISTER, written notice of the action taken including the reasons therefor.

(g) Any final determination by the Administrator to take the proposed action is subject to judicial review as provided in chapter 7 of title 5, United States Code.

(h) The issuance of any notice of proposed action under this section will not affect the continuation of exploration activities by a licensee, except as provided in paragraph (i) of this section.

(i) The provisions of paragraphs (c), (d), (e) and (h) of this section will not apply when:

(1) The President determines by Executive Order that an immediate suspension of a license, or immediate suspension or modification of particular activities under such license, is necessary for the reasons set forth in paragraph (a)(2) of this section; or

(2) The Administrator determines that immediate suspension of such a license, or immediate suspension or modification of particular activities under a license, is necessary to prevent a significant adverse effect on the environment or to preserve the safety of life or property at sea, and the Administrator issues an emergency order in accordance with § 971.1003(d)(4).

(j) The Administrator will immediately rescind the emergency order as soon as he has determined that the cause for the order has been removed.

[46 FR 45903, Sept. 15, 1981, as amended at 54 FR 548, Jan. 6, 1989]

### § 970.512 Modification of terms, conditions and restrictions.

(a) After issuance or transfer of any license, the Administrator, after consultation with interested agencies and the licensee, may modify any term, condition, or restriction in such license for the following purposes:

(1) To avoid unreasonable interference with the interests of other nations in their exercise of the freedoms of the high seas, as recognized under general principles of international law. This determination will take into account the provisions of § 970.503;

(2) If relevant data and other information (including, but not limited to, data resulting from exploration activities under the license) indicate that modification is required to protect the quality of the environment or to promote the safety of life and property at sea;

(3) To avoid a conflict with any international obligation of the United

States, established by any treaty or convention in force with respect to the United States, as determined in writing by the President; or

(4) To avoid any situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict, as determined in writing by the President.

(b) The procedures for objection to the modification of a term, condition or restriction will be the same as those for objection to an original term, condition or restriction under § 970.510, except that the period for filing notice of objection will run from the receipt of notice of proposed modification. Public notice of proposed modifications under this section will be made according to § 970.514. On or before the date of publication of public notice, written notice will be provided to the licensee.

[46 FR 45903, Sept. 15, 1981; 47 FR 5966, Feb. 9, 1982]

### § 970.513 Revision of a license.

(a) During the term of an exploration license, the licensee may submit to the Administrator an application for a revision of the license or the exploration plan associated with it. NOAA recognizes that changes in circumstances encountered, and in information and technology developed, by the licensee during exploration may require such revisions. In some cases it may even be advisable to recognize at the time of filing the original license application that although the essential information for issuing or transferring a license as specified in §§ 970.201 through 920.208 must be included in such application, some details may have to be provided in the future in the form of a revision. In such instances, the Administrator may issue or transfer a license which would authorize exploration activities and plans only to the extent described in the application.

(b) The Administrator will approve such application for a revision upon a finding in writing that the revision will comply with the requirements of the Act and this part.

(c) A change which would require an application to and approval by the Administrator as a revision is a major change in one or more of:

(1) The bases for certifying the original application pursuant to §§ 970.401 through 970.406;

(2) The bases for issuing or transferring the license pursuant to §§ 970.503 through 970.507; or

(3) The terms, conditions and restrictions issued for the license pursuant to §§ 970.517 through 970.524.

A major change is one which is of such significance so as to raise a question as to:

(i) The applicant's ability to meet the requirements of the sections cited in paragraphs (c) (1) and (2) of this section; or

(ii) The sufficiency of the terms, conditions and restrictions to accomplish their intended purpose.

### § 970.514 Scale requiring application procedures.

(a) A proposal by the Administrator to modify a term, condition or restriction in a license pursuant to § 970.512, or an application by a licensee for revision of a license or exploration plan pursuant to § 970.513, is significant, and the full application requirements and procedures will apply, if it would result in other than an incidental:

(1) Increase in the size of the exploration area; or

(2) Change in the location of the area.

An incidental increase or change is that which equals two percent or less of the original exploration area, so long as such adjustment is contiguous to the licensed area.

(b) All proposed modifications or revisions other than described in paragraph (a) of this section will be acted on after a notice thereof is published by the Administrator in the FEDERAL REGISTER, with a 60-day opportunity for public comment. On a case-by-case basis, the Administrator will determine if other procedures, such as a public hearing in a potentially affected area, are warranted. Notice of the Administrator's decision on the proposed modification will be provided to the licensee in writing and published in the FEDERAL REGISTER.

### § 970.515 Duration of a license.

(a) Each exploration license will be issued for a period of 10 years.

(b) If the licensee has substantially complied with the license and its associated exploration plan and requests an extension of the license, the Administrator will extend the license on terms, conditions and restrictions consistent with the Act and this part for a period of not more than 5 years.

In determining substantial compliance for purposes of this section, the Administrator may make allowance for deviation from the exploration plan for good cause, such as significantly changed market conditions. However, a request for extension must be accompanied by an amended exploration plan to govern the activities by the licensee during the extended period.

(c) Successive extensions may be requested, and will be granted by the Administrator, based on the criteria, and for the length of time, specified in paragraph (b) of this section.

### § 970.516 Approval of license transfers.

(a) The Administrator may transfer a license after a written request by the licensee. After a licensee submits such a request to the Administrator, the proposed transferee will be deemed an applicant for an exploration license, and will be subject to the requirements and procedures of this part.

(b) The Administrator will transfer a license if the proposed transferee and exploration activities meet the requirements of the Act and this part, and if the proposed transfer is in the public interest. The Administrator will presume that the transfer is in the public interest if it meets the requirements of the Act and this part. In case of mere change in the form or ownership of a licensee, the Administrator may waive relevant determinations for requirements for which no changes have occurred since the preceding application.

TERMS, CONDITIONS, AND RESTRICTIONS

### § 970.517 Diligence requirements.

The terms, conditions and restrictions in each exploration license must include provisions to assure diligent development. The Administrator will establish these pursuant to § 970.602.

### § 970.518 Environmental protection requirements.

(a) Each exploration license must contain such terms, conditions and restrictions, established by the Administrator, which prescribe actions the licensee must take in the conduct of exploration activities to assure protection of the environment. The Administrator will establish these pursuant to § 970.702.

(b) Before establishing the terms, conditions and restrictions pertaining to environmental protection, the Administrator will consult with the Administrator of the Environmental Protection Agency, the Secretary of State and the Secretary of the department in which the Coast Guard is operating. He also will take into account and give due consideration to the information contained in the final EIS prepared with respect to that proposed license.

### § 970.519 Resource conservation requirements.

For the purpose of conservation of natural resources, each license issued under this part will contain, as needed, terms, conditions and restrictions which have due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the hard mineral resources in the license area. The Administrator will establish these pursuant to § 970.603.

### § 970.520 Freedom of the high seas requirements.

Each license issued under this part must include such restrictions as may be necessary and appropriate to ensure that the exploration activities do not unreasonably interfere with the interests of other nations in their exercise of the freedoms of the high seas, as recognized under general principles of international law, such as fishing, navigation, submarine pipeline and cable laying, and scientific research. The Administrator will consider the provisions in § 970.503 in establishing these restrictions.

### § 970.521 Safety at sea requirements.

The Secretary of the department in which the Coast Guard is operating, in consultation with the Administrator,

will require in any license issued under this part, in conformity with principles of international law, that vessels documented under the laws of the United States and used in activities authorized under the license comply with conditions regarding the design, construction, alteration, repair, equipment, operation, manning and maintenance relating to vessel and crew safety and the promotion of safety of life and property at sea. These requirements will be established with reference to subpart H of this part.

### § 970.522 Monitoring requirements.

Each exploration license must require the licensee:

(a) To allow the Administrator to place appropriate Federal officers or employees as observers aboard vessels used by the licensee in exploration activities to:

(1) Monitor such activities at such time, and to such extent, as the Administrator deems reasonable and necessary to assess the effectiveness of the terms, conditions, and restrictions of the license; and

(2) Report to the Administrator whenever such officers or employees have reason to believe there is a failure to comply with such terms, conditions, and restrictions;

(b) To cooperate with such officers and employees in the performance of monitoring functions; and

(c) To monitor the environmental effects of the exploration activities in accordance with a monitoring plan approved and issued by the Administrator as license terms, conditions and restrictions, and to submit such information as the Administrator finds to be necessary and appropriate to assess environmental impacts and to develop and evaluate possible methods of mitigating adverse environmental effects. This environmental monitoring plan and reporting will respond to the concerns and procedures discussed in Subpart G of this part.

### § 970.523 Special terms, conditions, and restrictions.

Although the general criteria and standards to be used in establishing terms, conditions, and restrictions for a license are set forth in this part, as referenced in §§ 970.517 through 970.522, the Administrator may impose special terms, conditions, and restrictions for the conservation of natural resources, protection of the environment, or the safety of life and property at sea when required by differing physical and environmental conditions.

### § 970.524 Other Federal requirements.

Pursuant to § 970.211, another Federal agency, upon review of an exploration license application submitted under this part, may indicate how terms, conditions, and restrictions might be added to the license, to assure compliance with any law or regulation within that agency's area of responsibility. In response to the intent, reflected in section 103(e) of the Act, to reduce the number of separate actions to satisfy the statutory responsibilities of these agencies, the Administrator may include such terms, conditions, and restrictions in a license.

## Subpart F—Resource Development Concepts

SOURCE: 46 FR 45907, Sept. 15, 1981, unless otherwise noted.

### § 970.600 General.

Several provisions in the Act relate to appropriate mining techniques or mining efficiency. These raise what could be characterized as resource development issues. In particular, under section 103(a)(2)(D) of the Act, the applicant will select the size and location of the area of an exploration plan, which will be approved unless the Administrator finds that the area is not a ''logical mining unit.'' Also, pursuant to section 108 of the Act the applicant's exploration plan and the terms, conditions and restrictions of each license must be designed to ensure diligent development. In addition, for the purpose of conservation of natural resources, section 110 of the Act provides that each license is to contain, but only as needed, terms, conditions, and restrictions which have due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the resources.

### § 970.601 Logical mining unit.

(a) In the case of an exploration license, a logical mining unit is an area of the deep seabed which can be explored under the license, and within the 10-year license period, in an efficient, economical and orderly manner with due regard for conservation and protection of the environment, taking into consideration the resource data, other relevant physical and environmental characteristics, and the state of the technology of the applicant as set forth in the exploration plan. In addition, it must be of sufficient size to allow for intensive exploration.

(b) Approval by the Administrator of a proposed exploration logical mining unit will be based on a case-by-case review of each application. In order to provide a proper basis for this evaluation, the applicant's exploration plan should describe the seabed topography, the location of mineral deposits and the nature of planned equipment and operations. Also, the exploration plan must show the relationship between the area to be explored and the applicant's plans for commercial recovery volume, to the extent projected in the exploration plan.

(c) In delineating an exploration area, the applicant need not include unmineable areas. Thus, the area need not consist of contiguous segments, as long as each segment would be efficiently mineable and the total proposed area constitutes a logical mining unit. In describing the area, the applicant must present the geodetic coordinates of the points defining the boundaries, referred to the World Geodetic System (WGS) Datum. A boundary between points must be a geodesic. If grid coordinates are desired, the Universal Transverse Mercator Grid System must be used.

(d) At the applicant's option, for the purpose of satisfying a possible obligation under a future Law of the Sea Treaty, the applicant may propose an exploration area which includes two exploration logical mining units. The applicant should specify in the application if this ''banking'' option is chosen, and any applicant choosing this option and filing an application based on pre-enactment exploration under § 970.301 shall so notify the Administrator in accordance with § 970.301(g).

(e) Applicants are advised that NOAA will not accept an application or issue a license for an exploration area larger than 150,000 square kilometers unless the applicant can demonstrate the necessity of a larger area based on factors such as topography, nodule abundance, distribution and ore grade. If the applicant elects to pursue the ''banking'' option described in paragraph (d) of this section, and wishes to apply for an exploration area larger than 150,000 square kilometers, the applicant must file a second application with respect to at least the area in excess of 150,000 square kilometers, unless the applicant justifies such excess area as part of a single application under the preceding sentence.

[46 FR 45907, Sept. 15, 1981, as amended at 47 FR 5968, Feb. 9, 1982]

### § 970.602 Diligent exploration.

(a) Each licensee must pursue diligently the activities described in his approved exploration plan. This requirement applies to the full scope of the plan, including environmental safeguards and monitoring systems. To help assure this diligence, terms, conditions and restrictions which the Administrator issues with a license will require such periodic reasonable expenditures for exploration by the licensee as the Administrator may establish, taking into account the size of the area of the deep seabed to which the exploration plan applies and the amount of funds which is estimated by the Administrator to be required during exploration for commercial recovery of hard mineral resources to begin within the time limit established by the Administrator. However, such required expenditures will not be established at a level which would discourage exploration by persons with less costly technology than is prevalently in use.

(b) In order to fulfill the diligence requirement, the applicant first must propose to the Administrator an estimated schedule of activities and expenditures pursuant to § 970.203(b) (3) and (6). The schedule must show, and the Administrator must be able to make a reasonable determination, that

the applicant can complete his exploration activities within the term of the license. In this regard, there must be a reasonable relationship between the size of the exploration area and the financial and technological resources reflected in the application. Also, the exploration must clearly point toward developing the ability, by the end of the 10-year license period, to apply for and obtain a permit for commercial recovery.

(c) Ultimately, the diligence requirement will involve a retrospective determination by the Administrator, based on the licensee's reasonable conformance to the approved exploration plan. Such determination, however, will take into account the need for some degree of flexibility in an exploration plan. It also will include consideration of the needs and stage of development of each licensee, again based on the approved exploration plan. In addition, the determination will take account of legitimate periods of time when there is no or very low expenditure, and will allow for a certain degree of flexibility for changes encountered by the licensee in such factors as its resource knowledge and financial considerations.

(d) In order for the Administrator to make determinations on a licensee's adherence to the diligence requirements, the licensee must submit a report annually reflecting his conformance to the schedule of activities and expenditures contained in the license. In case of any changes requiring a revision to an approved license and exploration plan, the licensee must advise the Administrator in accordance with § 970.513.

### § 970.603 Conservation of resources.

(a) With respect to the exploration phase of seabed mining, the requirement for the conservation of natural resources, encompassing due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the hard mineral resources in the area to which the license applies, may not be particularly relevant. Thus, since the Act requires such terms, conditions and restrictions only as needed, exploration licenses will require such provisions only as the Administrator deems necessary.

(b) NOAA views license phase mining system tests as an opportunity to examine, with industry, the conservation implications of any mining patterns used. Thus, in order to develop information needed for future decisions during commercial recovery, NOAA will include with a license a requirement for the submission of collector track and nodule production data. Only if information submitted reflects that the integrated system tests are resulting in undue waste or threatening the future opportunity for commercial recovery of the unrecovered balance of hard mineral resources will the Administrator modify the terms, conditions or restrictions pertaining to the conservation of natural resources, in order to address such problems.

(c) If the Administrator so modifies such terms, conditions and restrictions relating to conservation of resources, he will employ a balancing process in the consideration of the state of the technology being developed, the processing system utilized and the value and potential use of any waste, the environmental effects of the exploration activities, economic and resource data, and the national need for hard mineral resources.

## Subpart G—Environmental Effects

SOURCE: 46 FR 45908, Sept. 15, 1981, unless otherwise noted.

### § 970.700 General.

Congress, in authorizing the exploration for hard mineral resources under the Act, also enacted provisions relating to the protection of the marine environment from the effects of exploration activities. For example, before the Administrator may issue a license, pursuant to section 105(a)(4) of the Act he must find that the exploration proposed in an application cannot reasonably be expected to result in a significant adverse effect on the quality of the environment. Also, the Act requires in section 109(b) that each license issued by the Administrator must contain such terms, conditions and restrictions which prescribe the actions the licensee must take in the

conduct of exploration activities to assure protection of the environment. Furthermore, the Act in section 105(c)(1)(B) provides for the modification by the Administrator of any term, condition or restriction if relevant data and other information indicates that modification is required to protect the quality of the environment. In addition, section 114 of the Act specifies that each license issued under the Act must require the licensee to monitor the environmental effects of the exploration activities in accordance with guidelines issued by the Administrator, and to submit such information as the Administrator finds to be necessary and appropriate to assess environmental impacts and to develop and evaluate possible methods of mitigating adverse environmental effects.

### § 970.701 Significant adverse environmental effects.

(a) *Activities with no significant impact.* NOAA believes that exploration activities of the type listed below are very similar or identical to activities considered in section 6(c)(3) of NOAA Directives Manual 02–10, and therefore have no potential for significant environmental impact, and will require no further environmental assessment.

(1) Gravity and magnetometric observations and measurements;

(2) Bottom and sub-bottom acoustic profiling or imaging without the use of explosives;

(3) Mineral sampling of a limited nature such as those using either core, grab or basket samplers;

(4) Water and biotic sampling, if the sampling does not adversely affect shellfish beds, marine mammals, or an endangered species, or if permitted by the National Marine Fisheries Service or another Federal agency;

(5) Meteorological observations and measurements, including the setting of instruments;

(6) Hydrographic and oceanographic observations and measurements, including the setting of instruments;

(7) Sampling by box core, small diameter core or grab sampler, to determine seabed geological or geotechnical properties;

(8) Television and still photographic observation and measurements;

(9) Shipboard mineral assaying and analysis; and

(10) Positioning systems, including bottom transponders and surface and subsurface buoys filed in *Notices to Mariners*.

(b) *Activities with potential impact.* (1) NOAA research has identified at-sea testing of recovery equipment and the operation of processing test facilities as activities which have some potential for significant environmental impacts during exploration. However, the research has revealed that only the following limited effects are expected to have potential for significant adverse environmental impact.

(2) The programmatic EIS's documents three at-sea effects of deep seabed mining which cumulatively during commercial recovery have the potential for significant effect. These three effects also occur during mining system tests that may be conducted under a license, but are expected to be insignificant. These include the following:

(i) *Destruction of benthos in and near the collector track.* Present information reflects that the impact from this effect during mining tests under exploration licenses will be extremely small.

(ii) *Blanketing of benthic fauna and dilution of food supply away from mine site subareas.* The settling of fine sediments disturbed by tests under a license of scale-model mining systems which simulate commercial recovery could adversely affect benthic fauna by blanketing, diluation of their food supply, or both. Because of the anticipated slow settling rate of the sediments, the affected area could be quite large. However, research results are insufficient to conclude that this will indeed be a problem.

(iii) *Surface plume effect on fish larvae.* The impact of demonstration-scale mining tests during exploration is expected to be insignificant.

(3) If processing facilities in the United States are planned to be used for testing during exploration, NOAA also will assess their impacts in the site-specific EIS developed for each license.

(c) *NOAA approach.* In making determinations on significant adverse environmental effects, the Administrator will draw on the above conclusions and

other findings in NOAA's programmatic environmental statement and site-specific statements issued in accordance with the Act. He will issue licenses with terms, conditions and restrictions containing, as appropriate, environmental protection or mitigation requirements (pursuant to § 970.518) and monitoring requirements (pursuant to § 970.522). The focus of NOAA's environmental efforts will be on environmental research and on monitoring during mining tests to acquire more information on the environmental effects of deep seabed mining. If these efforts reveal that modification is required to protect the quality of the environment, NOAA then may modify terms, conditions and restrictions pursuant to § 970.512.

### § 970.702 Monitoring and mitigation of environmental effects.

(a) *Monitoring.* If an application is determined to be otherwise acceptable, the Administrator will specify an environmental monitoring plan as part of the terms, conditions and restrictions developed for each license. The plan will be based on the monotoring plan proposed by the applicant and reviewed by NOAA for completeness, accuracy and statistical reliability. This monitoring strategy will be devised to insure that the exploration activities do not deviate significantly from the approved exploration plan and to determine if the assessment of the plan's acceptability was sound. The monitoring plan, among other things, will include monitoring environmental parameters relating to verficiation of NOAA's findings concerning potential impacts, but relating mainly to the three unresolved concerns with the potential for significant environmental effect, as identified in § 970.701(b)(2). NOAA has developed a technical guidance document, which includes parameters pertaining to the upper and lower water column and operational aspects, which document will provide assistance in developing monitoring plans in consultation with applicants.

(b) *Mitigation.* Monitoring and continued research may develop information on future needs for mitigating environmental effects. If such needs are identified, terms, conditions and restrictions can be modified appropriately.

## Subpart H—Safety of Life and Property at Sea

### § 970.800 General.

The Act contains requirements, in the context of several decisions, that relate to assuring the safety of life and property at sea. For instance, before the Administrator may issue a license, section 105(a)(5) of the Act requires that he find that the proposed exploration will not pose an inordinate threat to the safety of life and property at sea. Also, under section 112(a) of the Act the Coast Guard, in consultation with NOAA, must require in any license or permit issued under the Act, in conformity with principles of international law, that vessels documented in the United States and used in activities authorized under the license comply with conditions regarding the design, construction, alteration, repair, equipment, operation, manning and maintenance relating to vessel and crew safety and the safety of life and property at sea. In addition, under section 105(c)(1)(B) of the Act, the Administrator may modify terms, conditions and restrictions for a license if required to promote the safety of life and property at sea.

[46 FR 45909, Sept. 15, 1981]

### § 970.801 Criteria for safety of life and property at sea.

Response to the safety at sea requirements in essence will involve vessel inspection requirements. These inspection requirements may be identified by reference to present laws and regulations. The primary inspection statutes pertaining to United States flag vessels are: 46 U.S.C. 86 (Loadlines); 46 U.S.C. 395 (Inspection of seagoing barges over 100 gross tons); 46 U.S.C. 367 (Inspection of sea-going motor vessels over 300 gross tons); and 46 U.S.C. 404 (Inspection of vessels above 15 gross tons carrying freight for hire). All United States flag vessels will be required to meet existing regulatory requirements applicable to such vessels. This includes the requirement for a current

valid Coast Guard Certificate of Inspection, as specified in §970.205. Being United States flag, these vessels will be under United States jurisdiction on the high seas and subject to domestic enforcement procedures. With respect to foreign flag vessels, the SOLAS 74 or SOLAS 60 certificate requirements or alternative IACS requirements, as specified in §970.205, apply.

[46 FR 45909, Sept. 15, 1981]

## Subpart I—Miscellaneous

### § 970.900 Other applicable regulations.

The regulations in subparts H, I and J of 15 CFR part 971 are consolidated regulations and are applicable both to licenses under this part and to permits under 15 CFR part 971. The regulations in subparts H, I and J of part 971 govern records to be maintained and information to be submitted by licensees and permittees, public disclosure of documents received by NOAA, relinquishment and surrender of licenses and permits, amendment of regulations, competition of time, uniform hearing procedures, and enforcement under the Act.

[54 FR 548, Jan. 6, 1989]

## Subparts J–W [Reserved]

## Subpart X—Pre-enactment Exploration

### § 970.2401 Definitions.

(a) *Engage in exploration* means:

(1) To cause or authorize exploration to occur, including but not limited to a person's actions as a sponsor, principal, or purchaser of exploration services; or

(2) To conduct exploration on behalf of a person described in paragraph (a)(1) of this section.

(b) [Reserved]

[45 FR 76662, Nov. 20, 1980, as amended at 47 FR 5966, Feb. 9, 1982]

### § 970.2402 Notice of pre-enactment exploration.

(a) *General.* NOAA encourages any United States citizen who engaged in exploration for deep seabed hard mineral resources before June 28, 1980, to file not later than February 1, 1981, a written notice with the Administrator, in care of: The Director, Office of Ocean Minerals and Energy, National Oceanic and Atmospheric Administration, Department of Commerce, Page Building 1, Suite 410, 2001 Wisconsin Avenue, NW., Washington, DC 20235. Such notice shall not constitute an application for a license or permit and shall not confer or confirm any priority of right to any site.

(b) *Content of pre-enactment exploration Notice.* If a notice of exploration commenced prior to June 28, 1980, is filed pursuant to paragraph (a) it should be in writing and include the following:

(1) Names, addresses, and telephone numbers of the United States citizens responsible for exploration operations to whom notices and orders are to be delivered;

(2) A description of the citizen or citizens engaging in such exploration including:

(i) Whether the citizen is a natural person, partnership, corporation, joint venture, or other form of association;

(ii) The state of incorporation of state in which the partnership or other business entity is registered;

(iii) The name of registered agent and places of business;

(iv) Certification of essential and non-proprietary provisions in articles of incorporation, charter, or articles of association; and

(v) Membership of the association, partnership, or joint venture, including information about the participation of partners and joint venturers, and/or ownership of stock.

(3) A general description of the exploration activities conducted prior to June 28, 1980, including:

(i) The approximate date that the citizen, or predecessor in interest, commenced exploration activities;

(ii) A general estimate of expenditures made on the exploration program prior to June 28, 1980;

(iii) A statement of whether the citizen intends to file an application for an exploration license pursuant to section 101(b)(1)(A) of the Act after NOAA issues regulations implementing section 103(a) of the Act; and

(iv) A statement of whether the citizen intends to continue to engage in

exploration as allowed by section 101(b) of the Act, pending a final determination on his application for an exploration license.

(c) *Exclusion of location information.* The information submitted in the notice of pre-enactment exploration required by this section shall *not* include the location of past or future exploration or prospective mine sites.

[45 FR 76662, Nov. 20, 1980]

## Subpart Y—Pre-license Exploration

SOURCE: 45 FR 76662, Nov. 20, 1980, unless otherwise noted.

### § 970.2501 Notice of pre-license exploration voyages.

(a) *General.* Any United States citizen who schedules an exploration voyage to begin after November 20, 1980 shall file written notice with the Administrator which sets out:

(1) The name, address and telephone number of the citizen;

(2) The anticipated date of commencement of the voyage and its planned duration;

(3) The exploration activities to be carried out on the voyage, including a general description of the equipment and methods to be used, and an estimate of the anticipated extent of seabed disturbance and effluent discharge; and

(4) If the U.S. citizen has not filed a notice of pre-enactment exploration in accordance with § 970.2402, the information specified in § 970.2402(b).

(b) *When and where to file Notice of future exploration*—(1) *When.* (i) Except as allowed in paragraph (b)(2) of this section, the notice required by paragraph (a) of this section must be filed not later than 45 days prior to the date on which the exploration voyage is scheduled to begin.

(ii) With respect to filing of the information referred to in paragraph (a)(4) of this section, the filing dates specified in paragraph (b) of this section shall prevail over the date specified in § 970.2402(a).

(2) *Exception.* If an exploration voyage is scheduled to begin before January 5, 1981, the notice required by paragraph (a) of this section must be filed on or before December 22, 1980.

(3) *Where.* The notice required by paragraph (a) of this section must be filed in writing with the Administrator, at the address specified in § 970.2402(a) of this part.

### § 970.2502 Post voyage report.

Within 30 days of the conclusion of each exploration voyage, the United States citizen engaging in the voyage shall submit to NOAA a report containing any environmental data or information obtained during that voyage.

### § 970.2503 Suspension of exploration activities.

(a) The Administrator may issue an emergency order, either in writing or orally with written confirmation, requiring the immediate suspension of exploration activities or any particular exploration activity when, in his judgment, immediate suspension of such activity or activities is necessary to prevent a significant adverse effect on the environment. Upon receipt of notice of the emergency order, the United States citizen engaged in the exploration shall immediately cease the activity that is the subject of the emergency order. During any suspension NOAA will consult with the citizen engaged in the activity suspended concerning appropriate measures to remove the cause of suspension. A suspension may be rescinded at any time by written notice from the Administrator upon presentation of satisfactory evidence by the citizen that the activity will no longer threaten a significant adverse effect on the environment.

(b) [Reserved]

## Subpart Z—Miscellaneous

### § 970.2601 Additional information.

Any United States citizen filing notice under § 970.2402 or § 970.2501 of this part shall provide such additional information as the Administrator may require as necessary and appropriate to implement section 101 of the Act.

[45 FR 76662, Nov. 20, 1980]

(c) The requirements of paragraphs (a)(1)–(3) and (5) of this section also apply if approval of processing outside the United States is requested by the applicant, in accordance with Executive Order 12114 which requires the environmental review of major Federal actions abroad. Information detailing the socio-economic impacts of foreign processing activities is not required.

## Subpart G—Safety of Life and Property at Sea

### § 971.700 General.

The Act contains several requirements that relate to assuring the safety of life and property at sea. For example, before the Administrator may issue a permit, he must find that the proposed recovery will not pose an inordinate threat to the safety of life and property at sea (section 105(a)(5)). The Coast Guard, in consultation with NOAA, must require in any permit issued under the Act, in conformity with principles of international law, that vessels documented in the United States and used in activities authorized under the permit comply with conditions regarding the design, construction, alteration, repair, equipment, operation, manning and maintenance relating to vessel and crew safety and the safety of life and property at sea (section 112(a)). The Administrator may impose or modify TCRs for a permit if required to promote the safety of life and property at sea (section 105(c)(1)(B)).

### § 971.701 Criteria for safety of life and property at sea.

Response to the safety at sea requirements in essence will involve vessel inspection requirements, as identified by present laws and regulations. The primary inspection statutes pertaining to United States flag vessels are: 46 App. U.S.C. 86 (Loadlines) and 46 U.S.C. 3301 (Inspection of Seagoing Barges, Seagoing Motor Vessels, and Freight Vessels). United States flag vessels will be required to meet all applicable regulatory requirements, including the requirement for a current valid Coast Guard Certificate of Inspection (pursuant to § 971.205(a)). United States flag vessels are under United States jurisdiction on the high seas and subject to domestic enforcement procedures. With respect to foreign flag vessels, the SOLAS 74 or SOLAS 60 certificate requirements specified in § 971.205(b) apply.

## Subpart H—Miscellaneous

### § 971.800 General.

The subpart contains miscellaneous provisions pursuant to the Act which are applicable to exploration licenses and commercial recovery permits.

### § 971.801 Records to be maintained and information to be submitted by licensees and permittees.

(a)(1) In addition to the information specified elsewhere in the part and in 15 CFR part 970, each licensee and permittee must keep such records, consistent with standard accounting principles, as specified by the Administrator in the license or permit. Such records shall include information which will fully disclose expenditures for exploration for, or commercial recovery of hard mineral resources in the area under license or permit, and any other information which will facilitate an effective audit of these expenditures.

(2) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for purposes of audit and examination to any books, documents, papers, and records of licensees and permittees which are necessary and directly pertinent to verification of the expenditures referred to in paragraph (a)(1) of this section.

(b) In addition to the information specified elsewhere in this part and in 15 CFR part 970, each applicant, licensee or permittee will be required to submit to the Administrator, upon request, data or other information the Administrator may reasonably need for purposes of:

(1) Making determinations with respect to the issuance, revocation, modification, or suspension of the license or permit in question;

(2) Evaluating the effectiveness of license or permit TCRs;

(3) Compliance with the biennial Congressional report requirement contained in section 309 of the Act; and

(4) Evaluation of the exploration or commercial recovery activities conducted by the licensee or permittee.

At a minimum, licensees and permittees shall submit an annual written report within 90 days after each anniversary of the license or permit issuance or transfer, discussing exploration or commercial recovery activities and expenditures. The report shall address diligence requirements (see § 971.503 and 15 CFR 970.602), implementation of any approved monitoring plan (see § 971.602 and 15 CFR 970.522(c) and 970.702(a)), and applicable changes which do not constitute revisions (see § 971.413(e) and 15 CFR 970.513(c)). Permittees must also report the tonnage of nodules recovered (§ 971.426) and discuss manganese conservation measures (see § 971.502).

### § 971.802 Public disclosure of documents received by NOAA.

(a) *Purpose.* This section provides a procedure by which persons submitting information pursuant to this part and 15 CFR part 970 may request that certain information not be subject to public disclosure. The substantiation requested is intended to assure that NOAA has a complete and proper basis for determining the legality and appropriateness of withholding or releasing the identified information if a public request for disclosure is received.

(b) *Written requests for confidential treatment.* (1) Any person who submits any information pursuant to this part or 15 CFR part 970, which information is considered by that person to be protected by the Trade Secrets Act (18 U.S.C. 1905) or otherwise to be a trade secret or commercial or financial information which is privileged or confidential, may request that the Administrator give the information confidential treatment.

(2)(i) Any request for confidential treatment of information:

(A) Should be submitted at the time of submission of information;

(B) Should state the period of time for which confidential treatment is desired (e.g., until a certain date, or until the occurrence of a certain event, or permanently);

(C) Must be submitted in writing; and

(D) Must include the name, mailing address, and telephone number of an agent of the submitter who is authorized to receive notice of requests for disclosure of the information pursuant to paragraph (d) of this section.

(ii) If information is submitted to the Administrator without an accompanying request for confidential treatment, the notice referred to in paragraph (d)(2) of this section need not be given. If a request for confidential treatment is received after the information itself is received, the Administrator will make efforts to the extent administratively practicable to associate the request with copies of the previously submitted information in the files of NOAA and the Federal agencies to which the Administrator distributed the information.

(3)(i) Information subject to a request for confidential treatment must be segregated from information for which confidential treatment is not being requested, and each page (or segregable portion of each page) subject to the request must be clearly marked with the name of the person requesting confidential treatment, the name of the applicant, licensee or permittee, and an identifying legend such as ''Proprietary Information'' or ''Confidential Treatment Requested.'' Where this marking proves impracticable, a cover sheet containing the identifying names and legend must be securely attached to the compilation of information for which confidential treatment is requested. Each copy of the information for which confidential treatment has been requested must be cross-referenced to the appropriate section of the application or other document. All information for which confidential treatment is requested pertaining to the same application or other document must be submitted to the Administrator in a package separate from that information for which confidential treatment is not being requested.

(ii) Each copy of any application or other document with respect to which confidential treatment of information has been requested must indicate, at

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(4) Evaluation of the exploration or commercial recovery activities conducted by the licensee or permittee.

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(ii) Each copy of any application or other document with respect to which confidential treatment of information has been requested must indicate, at

each place in the application or document where confidential information has been deleted, that confidential treatment of information has been requested.

(4) Normally, the Administrator will not make a determination as to whether confidential treatment is warranted until a request for disclosure of the information is received. However, on a case-by-case basis, the Administrator may make a determination in advance of a request, where it would facilitate obtaining voluntarily submitted information (rather than information required to be submitted under this part).

(c) *Substantiation of request for confidential treatment.* (1) Any request for confidential treatment may include a statement of the basis for believing that the information is deserving of confidential treatment, which addresses the issues relevant to a determination of whether the information is a trade secret, or commercial or financial information which is privileged or confidential. To the extent permitted by applicable law, part or all of any substantiation statement submitted will be treated as confidential if so requested, and must be segregated, marked, and submitted in accordance with the procedure described in paragraph (b)(3) of this section.

(2) Issues addressed in the statement should include:

(i) The commercial or financial nature of the information;

(ii) The nature and extent of the competitive advantage enjoyed as a result of possession of the information;

(iii) The nature and extent of the competitive harm which would result from public disclosure of the information;

(iv) The extent to which the information has been disseminated to employees and contractors of the person submitting the information;

(v) The extent to which persons other than the person submitting the information possesses, or have access to, the same information; and

(vi) The nature of the measures which have been and are being taken to protect the information from disclosure.

(d) *Requests for disclosure of trade secrets, privileged, or confidential information.* (1) Any request for disclosure of information submitted, reported or collected pursuant to this part must be made in accordance with 15 CFR 903.7.

(2) Upon receipt of a request for disclosure of information for which confidential treatment has been requested, the Administrator immediately will issue notice by an expeditious means (such as by telephone, confirmed by certified or registered mail, return receipt requested) of the request for disclosure to the person who requested confidential treatment of the information or to the designated agent. The notice also will:

(i) Inquire whether that person continues to maintain the request for confidential treatment;

(ii) Notify that person of the date (generally, not later than the close of business on the seventh working day after issuance of the notice) by which the person is strongly encouraged to deliver to the Administrator a written statement that the person either:

(A) Waives or withdraws the request for confidential treatment in full or in part; or

(B) Confirms that the request for confidential treatment is maintained;

(iii) Inform that person that by a date the Administrator specifies (generally, not later than the close of business on the seventh working day after issuance of the notice), the person:

(A) Is strongly encouraged to deliver to the Administrator a written statement addressing the issues listed in paragraph (c)(2) of this section, describing the basis for believing that the information is deserving of confidential treatment, if this statement was not previously submitted;

(B) Is strongly encouraged to deliver to the Administrator an update of or supplement to any statement previously submitted under paragraph (c) of this section; and

(C) May present to the Administrator in a form the Administrator deems appropriate (such as by telephone or in an informal conference) agruments against disclosure of the information; and

(iv) Inform that person that the burden is on him to assure that any response to the notice is delivered to the Administrator within the time specified in the notice.

(3) To the extent permitted by applicable law, part or all or of any statement submitted in response to any notice issued under paragraph (d)(2) will be treated as confidential if so requested by the person submitting the response. Any response for which confidential treatment is requested must be segregated, marked and submitted in accordance with the procedures described in paragraph (b)(3) of this section.

(4) Upon the expiration of the time allowed for response under paragraph (d)(2) of this section, the Administrator will determine, in consultation with the General Counsel for the Department of Commerce, whether confidential treatment is warranted based on the information then available to NOAA.

(5) If the person who requested confidential treatment waives or withdraws that request, the Administrator will proceed with appropriate disclosure of the information.

(6) If the Administrator determines that confidential treatment is warranted, he will so notify the person requesting confidential treatment, and will issue an initial denial of the request for disclosure of records in accordance with 15 CFR 903.8.

(7) If the Administrator determines that confidential treatment is not warranted for part or all of the information, the Administrator immediately will issue notice by an expeditious means (such as by telephone, confirmed by certified or registered mail, return receipt requested) to the person who requested confidential treatment. The notice will state:

(i) The basis for the Administrator's determination;

(ii) That the Administrator's determination constitutes final agency action on the request for confidential treatment;

(iii) That the final agency action is subject to judicial review under chapter 7 of title 5, United States Code; and

(iv) That on the seventh working day after issuance of the notice described in this paragraph (d)(7), the Administrator will make the information available to the person who requested disclosure unless the Administrator has first been notified of the filing of an action in a Federal court to obtain judicial review of the determination, and the court has issued an appropriate order preventing or limiting disclosure.

(8) The Administrator will keep a record of the date any notice is issued and the date any response is received, by the Administrator, under this paragraph (d).

(9) In all other respects, procedures for handling requests for records containing information submitted to, reported to, or collected by the Administrator pursuant to this part will be in accordance with 15 CFR Part 903. For example, if ten working days have passed after the receipt of a request for disclosure and, despite the exercise of due diligence by the agency, the Administrator cannot make a determination as to whether confidential treatment is warranted, the Administrator will issue appropriate notice in accordance with 15 CFR 903.8(b)(5).

(e) *Direct submission of confidential information.* If any person has reason to believe that it would be prejudiced by furnishing information required from it to the applicant, licensee or permittee, that person may file the required information directly with the Administrator. Information for which the person requests confidential treatment must be segregated, marked, and submitted in accordance with the procedures described in paragraph (b)(3) of this section.

(f) *Protection of confidential information transmitted by the Administrator to other agencies.* Each copy of information for which confidential treatment has been requested which is transmitted by the Administrator to other Federal agencies will be accompanied by a cover letter containing:

(1) A request that the other Federal agency maintain the information in confidence in accordance with applicable law (including the Trade Secret Act, 18 U.S.C. 1905) and any applicable protective agreement entered into by the Administrator and the Federal agency receiving the information;

(2) A request that the other Federal agency notify the Administrator immediately upon receipt of any request for disclosure of the information; and

(3) A request that all copies of the information be returned to the Administrator for secure storage or disposal promptly after the Federal agency determines that it no longer needs the information for its official use.

(g) When satisfied that adequate protection against public disclosure exists, applicants should provide the State agency with confidential and proprietary information which the State agency maintains is necessary to make a reasoned decision on the consistency of the proposal. State agency requests for such information must be related to the necessity of having such information to assess adequately the coastal zone effects of the proposal.

### § 971.803 Relinquishment and surrender of licenses and permits.

(a) Any licensee or permittee may at any time, without penalty:

(1) Surrender to the Administrator a license or permit issued to the licensee or permittee; or

(2) Relinquish to the Administrator, in whole or in part, any right to conduct any exploration or commercial recovery activities authorized by the license or permit.

(b) Any licensee or permittee who surrenders, or relinquishes any right under, a license or permit will remain liable with respect to all violations and penalties incurred, and damage to persons or property caused, by the licensee or permittee as a result of activities engaged in by the licensee or permittee under the license or permit.

### § 971.804 Amendment to regulations for conservation, protection of the environment, and safety of life and property at sea.

The Administrator may amend the regulations in this part and 15 CFR part 970 at any time as the Administrator determines to be necessary and appropriate in order to provide for the conservation of natural resources, protection of the environment, or the safety of life and property at sea. The amended regulations will apply to all exploration or commercial recovery activities conducted under any license or permit issued or maintained pursuant to this part or 15 CFR part 970, except that amended regulations which provide for conservation of natural resources will apply to activities conducted under an existing license or permit during the present term of that license or permit only if the Administrator determines that the amended regulations providing for conservation of natural resources will not impose serious or irreparable economic hardship on the licensee or permittee. Any amendment to regulations under this section will be made pursuant to the procedures in subpart I of this part.

### § 971.805 Computation of time.

Except where otherwise specified, Saturdays, Sundays and Federal Government holidays will be included in computing the time period allowed for filing any document or paper under this part or 15 CFR part 970, but when a time period expires on any of these days, that time period will be extended to include the next following Federal Government work day. Filing periods expire at the close of business on the day specified, for the office specified.

## Subpart I—Uniform Procedures

### § 971.900 Applicability.

The regulations of this subpart govern the following hearings conducted by NOAA under this part and under 15 CFR part 970:

(a) All adjudicatory hearings required by section 116(b) of the Act to be held on the following actions upon a finding by the Administrator that one or more specific and material issues of fact exist which require resolution by formal process, including but not limited to:

(1) All applications for issuance or transfer of licenses or permits;

(2) All proposed TCRs on a license or permit; and

(3) All proposals to modify significantly a license or permit;

(b) Hearings conducted under section 105(b)(3) of the Act on objection by a licensee or permittee to any term, condition or restriction in a license or permit, or to modification thereto, where

TITLE 30--**MINERAL** LANDS AND MINING

CHAPTER 26--**DEEP SEABED HARD MINERAL** RESOURCES

SUBCHAPTER I--REGULATION OF EXPLORATION AND COMMERCIAL RECOVERY BY UNITED STATES CITIZENS

# Sec. 1412. Licenses for exploration and permits for commercial recovery

## (a) Authority to issue

Subject to the provisions of this chapter, the Administrator shall issue to applicants who are eligible therefor licenses for exploration and permits for commercial recovery.

## (b) Nature of licenses and permits

(1) A license or permit issued under this subchapter shall authorize the holder thereof to engage in exploration or commercial recovery, as the case may be, consistent with the provisions of this chapter, the regulations issued by the Administrator to implement the provisions of this chapter, and the specific terms, conditions, and restrictions applied to the license or permit by the Administrator.

(2) Any license or permit issued under this subchapter shall be exclusive with respect to the holder thereof as against any other United States citizen or any citizen, national or governmental agency of, or any legal entity organized or existing under the laws of, any reciprocating state.

(3) A valid existing license shall entitle the holder, if otherwise eligible under the provisions of this chapter and regulations issued under this chapter, to a permit for commercial recovery. Such a permit recognizes the right of the holder to recover **hard mineral** resources, and to own, transport, use, and sell **hard mineral** resources recovered, under the permit and in accordance with the requirements of this chapter.

(4) In the event of interference with the exploration or commercial

recovery activities of a licensee or permittee by nationals of other states, the Secretary of State shall use all peaceful means to resolve the controversy by negotiation, conciliation, arbitration, or resort to agreed tribunals.

(c) Restrictions

(1) The Administrator may not issue--

(A) any license or permit after the date on which an international agreement is ratified by and enters into force with respect to the United States, except to the extent that issuance of such license or permit is not inconsistent with such agreement;

(B) any license or permit the exploration plan or recovery plan of which, submitted pursuant to section 1413(a)(2) of this title, would apply to an area to which applies, or would conflict with, (i) any exploration plan or recovery plan submitted with any pending application to which priority of right for issuance applies under section 1413(b) of this title, (ii) any exploration plan or recovery plan associated with any existing license or permit, or (iii) any equivalent authorization which has been issued, or for which formal notice of application has been submitted, by a reciprocating state prior to the filing date of any relevant application for licenses or permits pursuant to this subchapter;

(C) a permit authorizing commercial recovery within any area of the **deep seabed** in which exploration is authorized under a valid existing license if such permit is issued to other than the licensee for such area;

(D) any exploration license before July 1, 1981, or any permit which authorizes commercial recovery to commence before January 1, 1988;

(E) any license or permit the exploration plan or recovery plan for which applies to any area of the **deep seabed** if, within the 3-year period before the date of application for such license or permit, (i) the applicant therefor surrendered or relinquished such area under an exploration plan or recovery plan associated with a previous license or permit issued to such applicant, or (ii) a license or permit previously issued to the applicant had an exploration plan or recovery plan which applied to such area and such license or permit was revoked under section 1416 of this title; or

(F) a license or permit, or approve the transfer of a license or permit, except to a United States citizen.

(2) No permittee may use any vessel for the commercial recovery of **hard mineral** resources or for the processing at sea of **hard mineral**

resources recovered under the permit issued to the permittee unless the vessel is documented under the laws of the United States.

(3) Each permittee shall use at least one vessel documented under the laws of the United States for the transportation from each mining site of **hard mineral** resources recovered under the permit issued to the permittee.

(4) For purposes of the shipping laws of the United States, any vessel documented under the laws of the United States and used in the commercial recovery, processing, or transportation from any mining site of **hard mineral** resources recovered under a permit issued under this subchapter shall be deemed to be used in, and used in an essential service in, the foreign commerce or foreign trade of the United States, as defined in section 1244(a) of title 46, Appendix, and shall be deemed to be a vessel as defined in section 1271(b) of title 46, Appendix.

(5) Except as otherwise provided in this paragraph, the processing on land of **hard mineral** resources recovered pursuant to a permit shall be conducted within the United States: Provided, That the President does not determine that such restrictions contravene the overriding national interests of the United States. The Administrator may allow the processing of **hard mineral** resources at a place other than within the United States if he finds, after opportunity for an agency hearing, that--

(A) the processing of the quantity concerned of such resource at a place other than within the United States is necessary for the economic viability of the commercial recovery activities of a permittee; and

(B) satisfactory assurances have been given by the permittee that such resource, after processing, to the extent of the permittee's ownership therein, will be returned to the United States for domestic use, if the Administrator so requires after determining that the national interest necessitates such return.

(Pub. L. 96-283, title I, Sec. 102, June 28, 1980, 94 Stat. 558.)

## References in Text

The shipping laws of the United States, referred to in subsec. (c)(4), are classified generally to Title 46, Shipping, and Title 46, Appendix.

## Section Referred to in Other Sections

This section is referred to in sections 1413, 1428 of this title.

TITLE 30--**MINERAL** LANDS AND MINING

CHAPTER 26--**DEEP SEABED HARD MINERAL** RESOURCES

SUBCHAPTER I--REGULATION OF EXPLORATION AND COMMERCIAL RECOVERY BY UNITED STATES CITIZENS

Sec. 1413. License and permit applications, review, and certification

(a) Applications

(1) Any United States citizen may apply to the Administrator for the issuance or transfer of a license for exploration or a permit for commercial recovery.

(2)(A) Applications for issuance or transfer of licenses for exploration and permits for commercial recovery shall be made in such form and manner as the Administrator shall prescribe in general and uniform regulations and shall contain such relevant financial, technical, and environmental information as the Administrator may by regulations require as being necessary and appropriate for carrying out the provisions of this subchapter. In accordance with such regulations, each applicant for the issuance of a license shall submit an exploration plan as described in subparagraph (B), and each applicant for a permit shall submit a recovery plan as described in subparagraph (C).

(B) The exploration plan for a license shall set forth the activities proposed to be carried out during the period of the license, describe the area to be explored, and include the intended exploration schedule and methods to be used, the development and testing of systems for commercial recovery to take place under the terms of the license, an estimated schedule of expenditures, measures to protect the environment and to monitor the effectiveness of environmental safeguards and monitoring systems for commercial recovery, and such other information as is necessary and appropriate to carry out the provisions of this subchapter. The area set forth in an exploration plan shall be of sufficient size to allow for intensive exploration.

(C) The recovery plan for a permit shall set forth the activities proposed to be carried out during the period of the permit, and shall include the intended schedule of commercial recovery, environmental safeguards and monitoring systems, details of the area or areas proposed for commercial recovery, a resource assessment thereof, the methods and technology to be used for commercial recovery and processing, the methods to be used for disposal of wastes from recovery and processing, and such other information as is necessary and appropriate to carry out the provisions of this subchapter.

(D) The applicant shall select the size and location of the area of the exploration plan or recovery plan, which area shall be approved unless the Administrator finds that--

(i) the area is not a logical mining unit; or

(ii) commercial recovery activities in the proposed location would result in a significant adverse impact on the quality of the environment which cannot be avoided by the imposition of reasonable restrictions.

(E) For purposes of subparagraph (D), ``logical mining unit'' means--

(i) in the case of a license for exploration, an area of the **deep seabed** which can be explored under the license in an efficient, economical, and orderly manner with due regard for conservation and protection of the environment, taking into consideration the resource data, other relevant physical and environmental characteristics, and the state of the technology of the applicant as set forth in the exploration plan; or

(ii) in the case of a permit, an area of the **deep seabed**--

(I) in which **hard mineral** resources can be recovered in sufficient quantities to satisfy the permittee's estimated production requirements over the initial 20-year term of the permit in an efficient, economical, and orderly manner with due regard for conservation and protection of the environment, taking into consideration the resource data, other relevant physical and environmental characteristics, and the state of the technology of the applicant set out in the recovery plan;

(II) which is not larger than is necessary to satisfy the permittee's estimated production requirements over the initial 20-year term of the permit; and

(III) in relation to which the permittee's estimated production requirements are not found by the Administrator to be unreasonable.

(b) Priority of right for issuance

Subject to section 1411(b) of this title, priority of right for the issuance of licenses to applicants shall be established on the basis of the chronological order in which license applications which are in substantial compliance with the requirements established under subsection (a)(2) of this section are filed with the Administrator. Priority of right shall not be lost in the case of any application filed which is in substantial but not full compliance with such requirements if the applicant thereafter brings the application into conformity with such requirements within such reasonable period of time as the Administrator shall prescribe in regulations.

(c) Eligibility for certification

Before the Administrator may certify any application for issuance or transfer of a license for exploration or permit for commercial recovery, the Administrator must find in writing, after consultation with other departments and agencies pursuant to subsection (e) of this section, that--

(1) the applicant has demonstrated that, upon issuance or transfer of the license or permit, the applicant will be financially responsible to meet all obligations which may be required of a licensee or permittee to engage in the exploration or commercial recovery proposed in the application;

(2) the applicant has demonstrated that, upon issuance or transfer of the license or permit, the applicant will have the technological capability to engage in such exploration or commercial recovery;

(3) the applicant has satisfactorily fulfilled all obligations under any license or permit previously issued or transferred to the applicant under this chapter; and

(4) the proposed exploration plan or recovery plan of the applicant meets the requirements of this chapter and the regulations issued under this chapter.

(d) Antitrust review

(1) Whenever the Administrator receives any application for issuance or transfer of a license for exploration or permit for commercial recovery, the Administrator shall transmit promptly a complete copy of such application to the Attorney General of the United States and the Federal Trade Commission.

(2) The Attorney General and the Federal Trade Commission shall conduct such antitrust review of the application as they deem appropriate and shall, if they deem appropriate, advise the

Administrator of the likely effects of such issuance or transfer on competition.

(3) The Attorney General and the Federal Trade Commission may make any recommendations they deem advisable to avoid any action upon such application by the Administrator which would create or maintain a situation inconsistent with the antitrust laws. Such recommendations may include, without limitation, the denial of issuance or transfer of the license or permit or issuance or transfer upon such terms and conditions as may be appropriate.

(4) Any advice or recommendation submitted by the Attorney General or the Federal Trade Commission pursuant to this subsection shall be submitted within 90 days after receipt by them of the application. The Administrator shall not issue or transfer the license or permit during that 90-day period, except upon written confirmation by the Attorney General and the Federal Trade Commission that neither intends to submit any further advice or recommendation with respect to the application.

(5) If the Administrator decides to issue or transfer the license or permit with respect to which denial of the issuance or transfer of the license or permit has been recommended by the Attorney General or the Federal Trade Commission, or to issue or transfer the license or permit without imposing those terms and conditions recommended by the Attorney General or the Federal Trade Commission as appropriate to prevent any situation inconsistent with the antitrust laws, the Administrator shall, prior to or upon issuance or transfer of the license or permit, notify the Attorney General and the Federal Trade Commission of the reasons for such decision.

(6) The issuance or transfer of a license or permit under this subchapter shall not be admissible in any way as a defense to any civil or criminal action for violation of the antitrust laws of the United States, nor shall it in any way modify or abridge any private right of action under such laws.

(7) As used in this subsection, the term ``antitrust laws'' means the Act of July 2, 1890 (commonly known as the Sherman Act; 15 U.S.C. 1-7); sections 73 through 77 of the Act of August 27, 1894 (commonly known as the Wilson Tariff Act; 15 U.S.C. 8-11); the Clayton Act (15 U.S.C. 12 et seq.); the Act of June 19, 1936 (commonly known as the Robinson-Patman Price Discrimination Act; 15 U.S.C. 13-13b and 21a); and the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(e) Other Federal agencies

The Administrator shall provide by regulation for full consultation and cooperation, prior to certification of an application for the issuance or transfer of any license for exploration or permit for

commercial recovery and prior to the issuance or transfer of such a license or permit, with other Federal agencies or departments which have programs or activities within their statutory responsibilities which would be affected by the activities proposed in the application for the issuance or transfer of a license or permit. Not later than 30 days after June 28, 1980, the heads of any Federal departments or agencies having expertise concerning, or jurisdiction over, any aspect of the recovery or processing of **hard mineral** resources shall transmit to the Administrator written comments as to their expertise or statutory responsibilities pursuant to this chapter or any other Federal law. To the extent possible, such agencies shall cooperate to reduce the number of separate actions required to satisfy the statutory responsibilities of these agencies. The Administrator shall transmit to each such agency or department a complete copy of each application and each such agency or department, based on its legal responsibilities and authorities, may, not later than 60 days after receipt of the application, recommend certification of the application, issuance or transfer of the license or permit, or denial of such certification, issuance, or transfer. In any case in which an agency or department recommends such a denial, it shall set forth in detail the manner in which the application does not comply with any law or regulation within its area of responsibility and shall indicate how the application may be amended, or how terms, conditions, or restrictions might be added to the license or permit, to assure compliance with such law or regulation.

(f) Review period

All time periods for the review of an application for issuance or transfer of a license or permit established pursuant to this section shall, to the maximum extent practicable, run concurrently from the date on which the application is received by the Administrator.

(g) Application certification

Upon making the applicable determinations and findings required in sections 1411, 1412 of this title, and this section with respect to any applicant for the issuance or transfer of a license or a permit and the exploration or commercial recovery proposed by such applicant, after completion of procedures for receiving the application required by this chapter, and upon payment by the applicant of the fee required under section 1414 of this title, the Administrator shall certify the application for the issuance or transfer of the license or permit. The Administrator, to the maximum extent possible, shall endeavor to complete certification action on the application within 100 days after its submission. If final certification or denial of certification has

not occurred within 100 days after submission of the application, the Administrator shall inform the applicant in writing of the then pending unresolved issues, the Administrator's efforts to resolve them, and an estimate of the time required to do so.

(Pub. L. 96-283, title I, Sec. 103, June 28, 1980, 94 Stat. 560.)

## References in Text

Act of July 2, 1890 (commonly known as the Sherman Act; 15 U.S.C. 1-7), referred to in subsec. (d)(7), is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, which is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

Sections 73 through 77 of the Act of August 27, 1894 (commonly known as the Wilson Tariff Act; 15 U.S.C. 8-11), referred to in subsec. (d)(7), are sections 73 to 77 of act Aug. 27, 1894, ch. 349, 28 Stat. 570, as amended. Sections 73 to 76 enacted sections 8 to 11 of Title 15. Section 77 was not classified to the Code. For complete classification of this Act to the Code, see Short Title note set out under section 8 of Title 15 and Tables.

The Clayton Act (15 U.S.C. 12 et seq.), referred to in subsec. (d)(7), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

Act of June 19, 1936 (commonly known as the Robinson-Patman Price Discrimination Act; 15 U.S.C. 13-13b and 21a), referred to in subsec. (d)(7), is act June 19, 1936, ch. 592, 49 Stat. 1526, also known as the Robinson-Patman Anti-Discrimination Act, which enacted sections 13a, 13b, and 21a of Title 15, and amended section 13 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 13 of Title 15 and Tables.

The Federal Trade Commission Act (15 U.S.C. 41 et seq.), referred to in subsec. (d)(7), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (Sec. 41 et seq.) of chapter 2 of Title 15. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

## Section Referred to in Other Sections

This section is referred to in sections 1411, 1412, 1415, 1416 of this title.

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## Sec. 1414. License and permit fees

No application for the issuance or transfer of a license for exploration or permit for commercial recovery shall be certified unless the applicant pays to the Administrator a reasonable administrative fee which shall be deposited into miscellaneous receipts of the Treasury. The amount of the administrative fee imposed by the Administrator on any applicant shall reflect the reasonable administrative costs incurred in reviewing and processing the application.

(Pub. L. 96-283, title I, Sec. 104, June 28, 1980, 94 Stat. 563.)

### Section Referred to in Other Sections

This section is referred to in section 1413 of this title.

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### Sec. 1415. License and permit terms, conditions, and restrictions; issuance and transfer of licenses and permits

(a) Eligibility for issuance or transfer of license or permit

Before issuing or transferring a license for exploration or permit for commercial recovery, the Administrator must find in writing, after consultation with interested departments and agencies pursuant to section 1413(e) of this title, and upon considering public comments received with respect to the license or permit, that the exploration or commercial recovery proposed in the application--

(1) will not unreasonably interfere with the exercise of the freedoms of the high seas by other states, as recognized under general principles of international law;

(2) will not conflict with any international obligation of the United States established by any treaty or international convention in force with respect to the United States;

(3) will not create a situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict;

(4) cannot reasonably be expected to result in a significant adverse effect on the quality of the environment, taking into account the analyses and information in any applicable environmental impact statement prepared pursuant to section 1419(c) or 1419(d) of this title; and

(5) will not pose an inordinate threat to the safety of life and property at sea.

(b) Issuance and transfer of licenses and permits with terms, conditions, and restrictions

(1) Within 180 days after certification of any application for the issuance or transfer of a license or permit under section 1413(g) of this title, the Administrator shall propose terms and conditions for, and restrictions on, the exploration or commercial recovery proposed in the application which are consistent with the provisions of this chapter and regulations issued under this chapter. If additional time is needed, the Administrator shall notify the applicant in writing of the reasons for the delay and indicate the approximate date on which the proposed terms, conditions, and restrictions will be completed. The Administrator shall provide to each applicant a written statement of the proposed terms, conditions, and restrictions. Such terms, conditions, and restrictions shall be generally specified in regulations with general criteria and standards to be used in establishing such terms, conditions, and restrictions for a license or permit and shall be uniform in all licenses or permits, except to the extent that differing physical and environmental conditions require the establishment of special terms, conditions, and restrictions for the conservation of natural resources, protection of the environment, or the safety of life and property at sea.

(2) After preparation and consideration of the final environmental impact statement pursuant to section 1419(d) of this title on the proposed issuance of a license or permit and subject to the other provisions of this chapter, the Administrator shall issue to the applicant the license or permit with the terms, conditions, and restrictions incorporated therein.

(3) The licensee or permittee to whom a license or permit is issued or transferred shall be deemed to have accepted the terms, conditions, and restrictions in the license or permit if the licensee or permittee does not notify the Administrator within 60 days after receipt of the license or permit of each term, condition, or restriction with which the licensee or permittee takes exception. The licensee or permittee may, in addition to such objections as may be raised under applicable provisions of law, object to any term, condition, or restriction on the ground that the term, condition, or restriction is inconsistent with this chapter or the regulations promulgated thereunder. If, after the Administrator takes final action on these objections, the licensee or permittee demonstrates that a dispute remains on a material issue of fact, the licensee or permittee is entitled to a decision on the record after the opportunity for an agency hearing pursuant to sections 556 and 557 of title 5. Any such decision made by the Administrator shall be subject to judicial review as provided in chapter 7 of title 5.

(c) Modification and revision of terms, conditions, and restrictions

(1) After the issuance or transfer of any license or permit under subsection (b) of this section, the Administrator, after consultation with interested agencies and the licensee or permittee, may modify any term, condition, or restriction in such license or permit--

(A) to avoid unreasonable interference with the interests of other states in their exercise of the freedoms of the high seas, as recognized under general principles of international law;

(B) if relevant data and other information (including, but not limited to, data resulting from exploration or commercial recovery activities under the license or permit) indicate that modification is required to protect the quality of the environment or to promote the safety of life and property at sea and if such modification is consistent with the regulations issued to carry out section 1419(b) of this title;

(C) to avoid a conflict with any international obligation of the United States, established by any treaty or convention in force with respect to the United States, as determined in writing by the President; or

(D) to avoid any situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict, as determined in writing by the President.

(2) During the term of a license or a permit, the licensee or permittee may submit to the Administrator an application for a revision of the license or permit or the exploration plan or recovery plan associated with the license or permit. The Administrator shall approve such application upon a finding in writing that the revision will comply with the requirements of this chapter and the regulations issued under this chapter.

(3) The Administrator shall establish, by regulation, guidelines for a determination of the scale or extent of a proposed modification or revision for which any or all license or permit application requirements and procedures, including a public hearing, shall apply. Any increase in the size of the area, or any change in the location of an area, to which an exploration plan or a recovery plan applies, except an incidental increase or change, must be made by application for another license or permit.

(4) The procedures set forth in subsection (b)(3) of this section shall apply with respect to any modification under this subsection in the same manner, and to the same extent, as if such modification were an initial term, condition, or restriction proposed by the Administrator.

(d) Prior consultations

Prior to making a determination to issue, transfer, modify, or renew a license or permit under this section, the Administrator shall consult with any affected Regional Fishery Management Council established pursuant to section 1852 of title 16, if the activities undertaken pursuant to such license or permit could adversely affect any fishery within the Fishery Conservation Zone, or any anadromous species or Continental Shelf fishery resource subject to the exclusive management authority of the United States beyond such zone.

(Pub. L. 96-283, title I, Sec. 105, June 28, 1980, 94 Stat. 563; Pub. L. 96-561, title II, Sec. 238(b), Dec. 22, 1980, 94 Stat. 3300; Pub. L. 104-208, div. A, title I, Sec. 101(a) [title II, Sec. 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41.)

## References in Text

The Fishery Conservation Zone, referred to in subsec. (d), probably means the fishery conservation zone established by section 1811 of Title 16, Conservation, which as amended generally by Pub. L. 99-659, title I, Sec. 101(b), Nov. 14, 1986, 100 Stat. 3706, relates to United States sovereign rights and fishery management authority over fish within the exclusive economic zone as defined in section 1802 of Title 16.

## Amendments

1996--Subsec. (d). Pub. L. 104-208 made technical amendment to reference in original act which appears in text as reference to section 1852 of title 16.

1980--Subsec. (d). Pub. L. 96-561 made technical amendment to reference in original act which appears in text as reference to section 1852 of title 16.

## Effective Date of 1996 Amendment

Section 101(a) [title II, Sec. 211(b)] of div. A of Pub. L. 104-208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

## Effective Date of 1980 Amendment

Section 238(b) of Pub. L. 96-561 provided that the amendment made by that section is effective 15 days after Dec. 22, 1980.

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# Sec. 1417. Duration of licenses and permits

## (a) Duration of a license

Each license for exploration shall be issued for a period of 10 years. If the licensee has substantially complied with the license and the exploration plan associated therewith and has requested extensions of the license, the Administrator shall extend the license on terms, conditions, and restrictions consistent with this chapter and the regulations issued under this chapter for periods of not more than 5 years each.

## (b) Duration of a permit

Each permit for commercial recovery shall be issued for a term of 20 years and for so long thereafter as **hard mineral** resources are recovered annually in commercial quantities from the area to which the recovery plan associated with the permit applies. The permit of any permittee who is not recovering **hard mineral** resources in commercial quantities at the end of 10 years shall be terminated; except that the Administrator shall for good cause shown, including force majeure, adverse economic conditions, unavoidable delays in construction, major unanticipated vessel repairs that prevent the permittee from conducting commercial recovery activities during an annual period, or other circumstances beyond the control of the permittee, extend the 10-year period, but not beyond the initial 20-year term of the permit.

(Pub. L. 96-283, title I, Sec. 107, June 28, 1980, 94 Stat. 567.)

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# Sec. 1418. Diligence requirements

## (a) In general

The exploration plan or recovery plan and the terms, conditions, and restrictions of each license and permit issued under this subchapter shall be designed to assure diligent development. Each licensee shall pursue diligently the activities described in the exploration plan of the licensee, and each permittee shall pursue diligently the activities described in the recovery plan of the permittee.

## (b) Expenditures

Each license shall require such periodic reasonable expenditures for exploration by the licensee as the Administrator shall establish, taking into account the size of the area of the **deep seabed** to which the exploration plan associated with the license applies and the amount of funds which is estimated by the Administrator to be required for commercial recovery of **hard mineral** resources to begin within the time limit established by the Administrator. Such required expenditures shall not be established at a level which would discourage exploration by persons with less costly technology than is prevalently in use.

## (c) Commercial recovery

Once commercial recovery is achieved, the Administrator shall, within reasonable limits and taking into consideration all relevant factors, require the permittee to maintain commercial recovery throughout the period of the permit; except that the Administrator shall for good cause shown, including force majeure, adverse economic

conditions, or other circumstances beyond the control of the permittee, authorize the temporary suspension of commercial recovery activities. The duration of such a suspension shall not exceed one year at any one time, unless the Administrator determines that conditions justify an extension of the suspension.

(Pub. L. 96-283, title I, Sec. 108, June 28, 1980, 94 Stat. 567.)

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### Sec. 1419. Protection of the environment

(a) Environmental assessment

(1) **Deep** ocean mining environmental study (DOMES)

The Administrator shall expand and accelerate the program assessing the effects on the environment from exploration and commercial recovery activities, including seabased processing and the disposal at sea of processing wastes, so as to provide an assessment, as accurate as practicable, of environmental impacts of such activities for the implementation of subsections (b), (c), and (d) of this section.

(2) Supporting ocean research

The Administrator also shall conduct a continuing program of ocean research to support environmental assessment activity through the period of exploration and commercial recovery authorized by this chapter. The program shall include the development, acceleration, and expansion, as appropriate, of studies of the ecological, geological, and physical aspects of the **deep seabed** in general areas of the ocean where exploration and commercial development under the authority of this chapter are likely to occur, including, but not limited to--

(A) natural diversity of the **deep seabed** biota;

(B) life histories of major benthic, midwater, and surface organisms most likely to be affected by commercial recovery activities;

(C) long- and short-term effects of commercial recovery on

the **deep seabed** biota; and

(D) assessment of the effects of seabased processing activities.

Within 160 days after June 28, 1980, the Administrator shall prepare a plan to carry out the program described in this subsection, including necessary funding levels for the next five fiscal years, and shall submit the plan to the Congress.

(b) Terms, conditions, and restrictions

Each license and permit issued under this subchapter shall contain such terms, conditions, and restrictions, established by the Administrator, which prescribe the actions the licensee or permittee shall take in the conduct of exploration and commercial recovery activities to assure protection of the environment. The Administrator shall require in all activities under new permits, and wherever practicable in activities under existing permits, the use of the best available technologies for the protection of safety, health, and the environment wherever such activities would have a significant effect on safety, health, or the environment, except where the Administrator determines that the incremental benefits are clearly insufficient to justify the incremental costs of using such technologies. Before establishing such terms, conditions, and restrictions, the Administrator shall consult with the Administrator of the Environmental Protection Agency, the Secretary of State, and the Secretary of the department in which the Coast Guard is operating, concerning such terms, conditions, and restrictions, and the Administrator shall take into account and give due consideration to the information contained in each final environmental impact statement prepared with respect to such license or permit pursuant to subsection (d) of this section.

(c) Programmatic environmental impact statement

(1) If the Administrator, in consultation with the Administrator of the Environmental Protection Agency and with the assistance of other appropriate Federal agencies, determines that a programmatic environmental impact statement is required, the Administrator shall, as soon as practicable after June 28, 1980, with respect to the areas of the oceans in which any United States citizen is expected to undertake exploration and commercial recovery under the authority of this chapter--

(A) prepare and publish draft programmatic environmental impact statements which assess the environmental impacts of exploration and commercial recovery in such areas;

(B) afford all interested parties a reasonable time after such dates of publication to submit comments to the Administrator on such draft statements; and

(C) thereafter prepare (giving full consideration to all comments submitted under subparagraph (B)) and publish final programmatic environmental impact statements regarding such areas.

(2) With respect to the area of the oceans in which exploration and commercial recovery by any United States citizen will likely first occur under the authority of this chapter, the Administrator shall prepare a draft and final programmatic environmental impact statement as required under paragraph (1), except that--

(A) the draft programmatic environmental impact statement shall be prepared and published as soon as practicable but not later than 270 days (or such longer period as the Administrator may establish for good cause shown) after June 28, 1980; and

(B) the final programmatic environmental impact statement shall be prepared and published within 180 days (or such longer period as the Administrator may establish for good cause shown) after the date on which the draft statement is published.

(d) Environmental impact statements on issuance of licenses and permits

The issuance of, but not the certification of an application for, any license or permit under this title shall be deemed to be a major Federal action significantly affecting the quality of the human environment for purposes of section 4332 of title 42. In preparing an environmental impact statement pursuant to this subsection, the Administrator shall consult with the agency heads referred to in subsection (b) of this section and shall take into account, and give due consideration to, the relevant information contained in any applicable studies and any other environmental impact statement prepared pursuant to this section. Each draft environmental impact statement prepared pursuant to this subsection shall be published, with the terms, conditions, and restrictions proposed pursuant to section 1415(b) of this title, within 180 days (or such longer period as the Administrator may establish for good cause shown in writing) following the date on which the application for the license or permit concerned is certified by the Administrator. Each final environmental impact statement shall be published 180 days (or such longer period as the Administrator may establish for good cause shown in writing) following the date on which the draft environmental impact statement is published.

(e) Effect on other law

For the purposes of this chapter, any vessel or other floating craft engaged in commercial recovery or exploration shall not be deemed to be ``a vessel or other floating craft'' under section 502(12)(B) of the Clean Water Act [33 U.S.C. 1362(12)(B)] and any discharge of a pollutant from such vessel or other floating craft shall be subject to the Clean Water Act [33 U.S.C. 1251 et seq.].

(f) Stable reference areas

(1) Within one year after June 28, 1980, the Secretary of State shall, in cooperation with the Administrator and as part of the international consultations pursuant to section 1428(f) of this title, negotiate with all nations that are identified in such subsection for the purpose of establishing international stable reference areas in which no mining shall take place: Provided, however, That this subsection shall not be construed as requiring any substantial withdrawal of **deep seabed** areas from **deep seabed** mining authorized by this chapter.

(2) Nothing in this chapter shall be construed as authorizing the United States to unilaterally establish such reference area or areas nor shall the United States recognize the unilateral claim to such reference area or areas by any State.

(3) Within four years after June 28, 1980, the Secretary of State shall submit a report to Congress on the progress of establishing such stable reference areas, including the designation of appropriate zones to insure a representative and stable biota of the **deep seabed**.

(4) For purposes of this section ``stable reference areas'' shall mean an area or areas of the **deep seabed** to be used as a reference zone or zones for purposes of resource evaluation and environmental assessment of **deep seabed** mining in which no mining will occur.

(Pub. L. 96-283, title I, Sec. 109, June 28, 1980, 94 Stat. 568.)

References in Text

The Clean Water Act, referred to in subsec. (e), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, Sec. 2, Oct. 18, 1972, 86 Stat. 816, also known as the Federal Water Pollution Control Act, which is classified generally to chapter 26 (Sec. 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

Section Referred to in Other Sections

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## Sec. 1420. Conservation of natural resources

For the purpose of conservation of natural resources, each license and permit issued under this subchapter shall contain, as needed, terms, conditions, and restrictions which have due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the **hard mineral** resources in the area to which the license or permit applies. In establishing these terms, conditions, and restrictions, the Administrator shall consider the state of the technology, the processing system utilized and the value and potential use of any waste, the environmental effects of the exploration or commercial recovery activities, economic and resource data, and the national need for **hard mineral** resources. As used in this chapter, the term ``conservation of natural resources'' is not intended to grant, imply, or create any inference of production controls or price regulation, in particular those which would affect the volume of production, prices, profits, markets, or the decision of which minerals or metals are to be recovered, except as such effects may be incidental to actions taken pursuant to this section.

(Pub. L. 96-283, title I, Sec. 110, June 28, 1980, 94 Stat. 570.)

### Section Referred to in Other Sections

This section is referred to in section 1468 of this title.

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## Sec. 1421. Prevention of interference with other uses of the high seas

Each license and permit issued under this subchapter shall include such restrictions as may be necessary and appropriate to ensure that exploration or commercial recovery activities conducted by the licensee or permittee do not unreasonably interfere with the interests of other states in their exercise of the freedoms of the high seas, as recognized under general principles of international law.

(Pub. L. 96-283, title I, Sec. 111, June 28, 1980, 94 Stat. 571.)

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Sec. 1422. Safety of life and property at sea

(a) Conditions regarding vessels

The Secretary of the department in which the Coast Guard is operating, in consultation with the Administrator, shall require in any license or permit issued under this subchapter, in conformity with principles of international law, that vessels documented under the laws of the United States and used in activities authorized under the license or permit comply with conditions regarding the design, construction, alteration, repair, equipment, operation, manning, and maintenance relating to vessel and crew safety and the promotion of safety of life and property at sea.

(b) Applicability of other laws

Notwithstanding any other provision of law, any vessel described in subsection (a) of this section shall be subject to the provisions of chapter 51 of title 46, and to the provisions of titles 52 and 53 of the Revised Statutes and all Acts amendatory thereof or supplementary thereto.

(Pub. L. 96-283, title I, Sec. 112, June 28, 1980, 94 Stat. 571.)

References in Text

Title 52 of the Revised Statutes, referred to in subsec. (b), consisted of R.S. Secs. 4399 to 4500, which were classified to sections 170, 214, 215, 222, 224, 224a, 226, 228, 229, 230 to 234, 239, 240, 361, 362, 364, 371 to 373, 375 to 382, 384, 385, 391, 391a, 392 to 394, 399

to 404, 405 to 416, 435 to 440, 451 to 453, 460, 461 to 463, 464, 466, 467 to 482, and 489 to 498 of former Title 46, Shipping. For complete classification of R.S. Secs. 4399 to 4500 to the Code, see Tables. A majority of such sections of the Revised Statutes were repealed and various provisions thereof were reenacted in Title 46, Shipping, by Pub. L. 98-89, Aug. 26, 1983, 97 Stat. 500. For disposition of sections of former Title 46 into revised Title 46, see Table at beginning of Title 46.

Title 53 of the Revised Statutes, referred to in subsec. (b), consisted of R.S. Secs. 4501 to 4612, which were classified to sections 541 to 543, 545 to 549, 561, 562, 564 to 571, 574 to 578, 591 to 597, 600, 602 to 605, 621 to 628, 641 to 643, 644, 645, 651 to 660, 661 to 669, 674 to 679, 681 to 687, 701 to 710, and 711 to 713 of former Title 46, Shipping. For complete classification of R.S. Secs. 4501 to 4612 to the Code, see Tables. A majority of such sections of the Revised Statutes were repealed and various provisions thereof were reenacted in Title 46, Shipping, by Pub. L. 98-89, Aug. 26, 1983, 97 Stat. 500. For disposition of sections of former Title 46 into revised Title 46, see Table at beginning of Title 46.

## Codification

In subsec. (b), ``chapter 51 of title 46'' substituted for ``the International Voyage Load Line Act of 1973'' on authority of Pub. L. 99-509, title V, Sec. 5103(b), Oct. 21, 1986, 100 Stat. 1927, section 5101 of which enacted parts C and J of subtitle II of Title 46, Shipping.

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Sec. 1423. Records, audits, and public disclosure

(a) Records and audits

(1) Each licensee and permittee shall keep such records, consistent with standard accounting principles, as the Administrator shall by regulation prescribe. Such records shall include information which will fully disclose expenditures for exploration and commercial recovery, including processing, of **hard mineral** resources, and such other information as will facilitate an effective audit of such expenditures.

(2) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for purposes of audit and examination, to any books, documents, papers, and records of licensees and permittees which are necessary and directly pertinent to verify the expenditures referred to in paragraph (1).

(b) Submission of data and information

Each licensee and permittee shall be required to submit to the Administrator such data or other information as the Administrator may reasonably need for purposes of making determinations with respect to the issuance, revocation, modification, or suspension of any license or permit; compliance with the reporting requirement contained in section 1469 of this title; and evaluation of the exploration or commercial recovery activities conducted by the licensee or permittee.

(c) Public disclosure

Copies of any document, report, communication, or other record maintained or received by the Administrator containing data or information required under this subchapter shall be made available to any person upon any request which (1) reasonably describes such record and (2) is made in accordance with rules adopted by the Administrator stating the time, place, fees (if any, not to exceed the direct cost of the services rendered), and procedures to be followed, except that neither the Administrator nor any other officer or employee of the United States may disclose any data or information knowingly and willingly required under this subchapter the disclosure of which is prohibited by section 1905 of title 18. Any officer or employee of the United States who discloses data or information in violation of this subsection shall be subject to the penalties set forth in section 1463(b) of this title.

(Pub. L. 96-283, title I, Sec. 113, June 28, 1980, 94 Stat. 571.)

## Section Referred to in Other Sections

This section is referred to in section 1428 of this title.

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## Sec. 1424. Monitoring of activities of licensees and permittees

Each license and permit issued under this subchapter shall require the licensee or permittee--

(1) to allow the Administrator to place appropriate Federal officers or employees as observers aboard vessels used by the licensee or permittee in exploration or commercial recovery activities (A) to monitor such activities at such time, and to such extent, as the Administrator deems reasonable and necessary to assess the effectiveness of the terms, conditions, and restrictions of the license or permit, and (B) to report to the Administrator whenever such officers or employees have reason to believe there is a failure to comply with such terms, conditions, and restrictions;

(2) to cooperate with such officers and employees in the performance of monitoring functions; and

(3) to monitor the environmental effects of the exploration and commercial recovery activities in accordance with guidelines issued by the Administrator and to submit such information as the Administrator finds to be necessary and appropriate to assess environmental impacts and to develop and evaluate possible methods of mitigating adverse environmental effects.

(Pub. L. 96-283, title I, Sec. 114, June 28, 1980, 94 Stat. 572.)

### Section Referred to in Other Sections

This section is referred to in section 1461 of this title.

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Sec. 1425. Relinquishment, surrender, and transfer of licenses and permits

(a) Relinquishment and surrender

Any licensee or permittee may at any time, without penalty--

(1) surrender to the Administrator a license or a permit issued to the licensee or permittee; or

(2) relinquish to the Administrator, in whole or in part, any right to conduct any exploration or commercial recovery activities authorized by the license or permit.

Any licensee or permittee who surrenders a license or permit, or relinquishes any such right, shall remain liable with respect to all violations and penalties incurred, and damage to persons or property caused, by the licensee or permittee as a result of activities engaged in by the licensee or permittee under such license or permit.

(b) Transfer

Any license or permit, upon written request of the licensee or permittee, may be transferred by the Administrator; except that no such transfer may occur unless the proposed transferee is a United States citizen and until the Administrator determines that (1) the proposed transfer is in the public interest, and (2) the proposed transferee and the exploration or commercial recovery activities the transferee proposes to conduct meet the requirements of this chapter and regulations issued under this chapter.

(Pub. L. 96-283, title I, Sec. 115, June 28, 1980, 94 Stat. 572.)

TITLE 30--**MINERAL** LANDS AND MINING

CHAPTER 26--**DEEP SEABED HARD MINERAL** RESOURCES

SUBCHAPTER I--REGULATION OF EXPLORATION AND COMMERCIAL RECOVERY BY UNITED STATES CITIZENS

# Sec. 1426. Public notice and hearings

## (a) Required procedures

The Administrator may issue regulations to carry out this chapter, establish and significantly modify terms, conditions, and restrictions in licenses and permits issued under this subchapter, and issue or transfer licenses and permits under this subchapter, only after public notice and opportunity for comment and hearings in accordance with the following:

(1) The Administrator shall publish in the Federal Register notice of all applications for licenses and permits, all proposals to issue or transfer licenses and permits, all regulations implementing this chapter, all terms, conditions, and restrictions on licenses and permits, and all proposals to significantly modify licenses and permits. Interested persons shall be permitted to examine the materials relevant to any of these actions, and shall have at least 60 days after publication of such notice to submit written comments to the Administrator.

(2) The Administrator shall hold a public hearing in an appropriate location and may employ such additional methods as the Administrator deems appropriate to inform interested persons about each action specified in paragraph (1) and to invite their comments thereon.

## (b) Adjudicatory hearing

If the Administrator determines that there exists one or more specific and material factual issues which require resolution by formal processes, at least one adjudicatory hearing shall be held in the

District of Columbia in accordance with the provisions of section 554 of title 5. The record developed in any such adjudicatory hearing shall be part of the basis for the Administrator's decision to take any action referred to in subsection (a) of this section. Hearings held pursuant to this section shall be consolidated insofar as practicable with hearings held by other agencies.

(Pub. L. 96-283, title I, Sec. 116, June 28, 1980, 94 Stat. 573.)

1 through December 31, 1999 (66 FR 64214). On December 10, 2001, we received a timely filed ministerial error allegation. Based on our analysis of this information, the Department of Commerce has revised the net subsidy rate for N. Puglisi & F. Industria Paste Alimentari S.p.A.

**EFFECTIVE DATE:** January 2, 2002.

**FOR FURTHER INFORMATION CONTACT:** Meg Weems or Craig Matney, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2613 or 482–1778, respectively.

**Corrections**

*N. Puglisi & F. Industria Paste Alimentari S.p.A. (''Puglisi'')*

On December 10, 2001, respondent Puglisi timely filed a ministerial error allegation. Puglisi states that, with respect to a Law 64/86 industrial development loan (''IDL''), the Department of Commerce (''the Department'') failed to deduct loan guarantee payments from the gross loan subsidy received by Puglisi during the period of review, resulting in a clerical error. Puglisi further explains that the Department added the loan guarantee payments to the ''total amount of interest and fee payments made'' and then again added the loan guarantee payments to the ''total benchmark interest and fees,'' thereby nullifying the deduction of these fees from the countervailable subsidy. Puglisi suggests that the clerical error be corrected by either not including the annual fee payments in the ''benchmark interest and fee amounts,'' or by deducting the annual fee payments from the gross countervailable subsidy for the loan. The petitioner has not commented on this ministerial error allegation.

We agree with Puglisi that the Department miscalculated the duty rate for one of Puglisi's Law 64/86 IDLs by inadvertently nullifying the deduction of the loan guarantee fees from the countervailable subsidy. We have corrected this error for the amended final results by deducting the annual fee payments from the ''total interest and fee payments made,'' while excluding them from the ''benchmark interest and fee amounts.''

In the final results, we specified a total duty rate of 7.18 percent for Puglisi. In calculating this rate, we erroneously calculated the subsidy rate for Puglisi's Law 64/86 IDL to be 0.14 percent. The Law 64/86 IDL subsidy rate should have been 0.08 percent.

**Amended Final Results of Review**

Pursuant to the Department's regulations at 19 CFR 351.224(e), we correct the *ad valorem* rate for Puglisi to be 7.12 percent.

The Department will instruct the Customs Service (''Customs'') to assess countervailing duties on all appropriate entries on or after January 1, 1999, and on or before December 31, 1999. The Department will issue liquidation instructions directly to Customs. The amended cash deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This amendment to the final results of the countervailing duty administrative review is in accordance with section 751(a)(1) of the Tariff Act, as amended, (19 U.S.C. 1675(a)(1), 19 CFR 351.213, and 19 CFR 351.221(b)(5)).

Dated: December 26, 2001.

**Richard W. Moreland,**

*Acting Assistant Secretary for, Import Administration.*

[FR Doc. 01–32247 Filed 12–31–01; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 122701A]**

### Proposed Information Collection; Comment Request; Deep Seabed Mining Regulations for Exploration Licenses

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before March 4, 2002.

**ADDRESSES:** Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Joseph P. Flanagan at 301-713-3155, ext. 201 (or via Internet at joseph.flanagan@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

NOAA regulations at 15 CFR 970 govern the issuing and monitoring of exploration licenses under the Deep Seabed Hard Mineral Resources Act. Persons seeking a license must submit certain information that allows NOAA to ensure the applicant meets the standards of the Act. Persons with licenses are required to conduct monitoring and make reports, and they may request revisions to or transfers of licenses.

**II. Method of Collection**

Paper submissions are used.

**III. Data**

*OMB Number*: 0648-0145.

*Form Number*: None.

*Type of Review*: Regular submission.

*Affected Public*: Business or other for-profit organizations.

*Estimated Number of Respondents*: 2.

*Estimated Time Per Response*: 2000-4000 hours per application (no applications are expected) and 20 hours per report.

*Estimated Total Annual Burden Hours*: 40.

*Estimated Total Annual Cost to Public*: $120.

**IV. Request for Comments**

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 21, 2001.

**Madeleine Clayton,**

*Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 01–32239 Filed 12–31–01; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 072401A]**

### Small Takes of Marine Mammals Incidental to Specified Activities; Taking of Marine Mammals Incidental to Power Plant Operations

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of issuance of a renewal of a Letter of Authorization.

**SUMMARY:** In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that a Letter of Authorization (LOA) to unintentionally take small numbers of pinnipeds incidental to routine operations of the Seabrook Station nuclear power plant, Seabrook, NH (Seabrook Station) has been issued to the North Atlantic Energy Service Corporation (North Atlantic).

**DATES:** Effective from October 19, 2001, until June 26, 2002.

**ADDRESSES:** A copy of the application, Environmental Assessment, LOA, and other materials used in this document are available by writing to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed here.

**FOR FURTHER INFORMATION CONTACT:** Simona Perry Roberts, (301) 713–2322, ext 106; Jonathan Wendland, (978) 281–9146.

**SUPPLEMENTARY INFORMATION:**

#### Background

Sections 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if regulations are prescribed setting forth the permissible method of taking and the requirements pertaining to the monitoring and reporting of such taking.

Five-year regulations (effective from July 1, 1999 through June 30, 2004), including mitigation, monitoring, and reporting requirements, for the incidental taking of harbor seals (*Phoca vitulina*), gray seals (*Halichoerus grypus*), harp seals (*Phoca groenlandica*), and hooded seals (*Cystophora cristata*) by U.S. citizens engaged in power plant operations at the Seabrook Station nuclear power plant, Seabrook, NH are set out in 50 CFR 216.130 through.137.

#### Summary of Request

NMFS received a request from North Atlantic in June 2001 for renewal of their LOA, which expired on July 2, 2000, to lethally take 20 harbor seals and 4 of any combination of gray, harp, and hooded seals incidental to power plant operations at Seabrook Station.

#### Permissible Methods of Taking

According to 50 CFR 216.132, LOAs issued to North Atlantic for Seabrook Station authorize the incidental, but not intentional, take of harbor, gray, harp, and hooded seals in the course of operating the station's intake cooling water system. For a more complete description of the intake systems utilized at Seabrook Station please refer to the final rule (64 FR 28114, May 25, 1999).

#### Mitigation Requirements

NMFS, in the May 25, 1999, final rule (64 FR 28114), allowed North Atlantic to use the 5-year authorization period (July 1, 1999 through June 30, 2004) to fully explore any feasible mitigation methods, and if methods were not found to be suitable, to explore and undertake, in conjunction with NMFS, steps to promote the conservation of the population of Gulf of Maine seals as a whole.

#### Monitoring and Reporting Requirements

Monitoring under the renewed LOA must include: (1) twice daily visual inspection of the circulating water and service water forebays; (2) daily inspections of the intake transition structure from April 1 through December 1, unless weather conditions prevent safe access to the structure; (3) screen washings once per day during the peak months of seal takes and twice a week during non-peak months of seal takes; and, (4) examination of the screen wash debris to determine if any seal remains are present.

Seal takes must be reported to NMFS through both oral and written notification. NMFS must be notified via telephone by the close of business on the next day following the discovery of any marine mammal or marine mammal parts. Written notification to NMFS must be made within 30 days and must include the results of any examinations conducted by qualified members of the Marine Mammal Stranding Network as well as any other information relating to the take.

#### National Environmental Policy Act

NMFS issued an Environmental Assessment (EA) in 1998, in conjunction with the notice of proposed authorization. As a result of the findings made in the EA, NMFS concluded that implementation of either the preferred alternative or other identified alternatives would not have a significant impact on the human environment. Therefore, preparation of an environmental impact statement on these actions was not required by Section 102(2) of the National Environmental Policy Act or its implementing regulations. Copies of the 1998 EA and the Finding of No Significant Impact are available upon request (see **ADDRESSES**).

#### Determinations

NMFS has determined (see 64 FR 28114, May 25, 1999) that the taking of up to 20 harbor seals and 4 of any combination of gray, harp, and hooded seals, annually from July 1, 1999, through June 30, 2004, will have no more than a negligible impact (as defined in 50 CFR 216.3) on these stocks of marine mammals. The best scientific information available indicates that since 1981, the Western North Atlantic harbor seal stock has had an average annual rate of increase of 4.2 percent (Waring *et al.*, 2000). In addition, the Western North Atlantic stocks of gray, harp, and hooded seals also appear to be increasing in abundance (Waring *et al.*, 1999, 2000). The small number of takes at Seabrook Station relative to current population estimates is unlikely to reduce the rate of population growth for any of these pinniped stocks.

According to North Atlantic reports received in NMFS' Northeast Region, no seals have been entrapped since the installation of Seal Deterrent Barriers in August 1999.